84-556

No.

Office-Supreme Court, U.S.
FILED
OCT 5 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN SECURITY COUNCIL
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

and

UNITED STATES OF AMERICA,
Respondents,

CBS, INC.,
Intervenor.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROBERT J. BUENZLE
Buenzle & Hill
1920 N Street, N.W.
Suite 150
Washington, D.C. 20036
(202) 296-3050

Counsel for Petitioner

October 5, 1984

CASILLAS PRESS, INC. - 1717 K STREET N.W. WASHINGTON DC - 223-1220

QUESTIONS PRESENTED*

1. Whether the refusal of CBS to substantively respond to a legitimate inquiry and complaint from a member of the public was consistent with its duties as a public trustee or with its responsibilities under the Fairness Doctrine.

2. Whether the repeat showing by CBS of a program containing erroneous and misleading information without correction of such material of which they had previously been put on notice is consistent with its duties as a public trustee or with its responsibilities under the Fairness Doctrine.

3. Whether the Federal Communications Commission has adopted a *de facto* policy against granting substantive analysis and relief under the Fairness Doctrine.

4. Whether in the absence of Congressional concurrence and in view of this Court's Opinion in *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367 (1969), the Federal Communications Commission has the authority, *de jure* or *de facto* to fail to observe and implement the Fairness Doctrine.

5. Whether the Fairness Doctrine reduces or enhances free speech.

6. Whether the Fairness Doctrine is an essential and necessary protection and remedy for the general public or whether it has been rendered "obsolete" by the advent of increased technology in media.

---

*All parties to this proceeding are identified in the caption hereof.

TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED i

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 7

CONCLUSIONS 15

CITATIONS

Cases: Page

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) 7, 8, 9

FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978) 9

American Security Council Education Foundation v. FCC, 63 FCC 2d 366 (1977), *aff'd*, 197 U.S. App. D.C. 124, 607 F.2d 438 (1979) *(en banc) cert. denied*, 444 U.S. 1013 (1980) 12

Federal Communications Commission v. League of Women Voters of California, et al., ____ U.S. ____, Slip Opinion 82-192, decided July 2, 1984 15

Administrative Decisions:

In Re John Howard, 55 FCC 2d 777 (1975) 5, 12

Page

Administrative Reports of the Federal Communications Commission:

Report on Editorializing, by Broadcast Licensees 13 FCC 1246 (1949) 7

Fairness Report, 48 FCC 2d 1, *Reconsideration Denied,* 58 FCC 2d 691 (1976), *aff'd in relevant part sub nom National Citizens Committee for Broadcasting v. FCC,* 186 U.S. App. D.C. 102, 567 F.2d 1095 (1977), *cert. denied,* 436 U.S. 926 (1978) 10

Notice of Inquiry in Re: General Fairness Doctrine Obligation of Broadcast Licensees, ____ FCC 2d ____, FCC 84-140 (Docket No. 84-282) released May 8, 1984 ..... 6, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No.

AMERICAN SECURITY COUNCIL
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

and

UNITED STATES OF AMERICA,
Respondents,

CBS, INC.,
Intervenor.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The American Security Council (ASC) hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case. The Decision of the court below affirmed the Decision of the Federal Communications Commission in refusing to consider Petitioner's fairness doctrine complaint against CBS, Inc.

OPINIONS BELOW

The judgment of the Court of Appeals below (App B) was issued without opinion and has not yet been reported.

The Memorandum, Opinion and Order of the Federal Communications Commission (App C) which was affirmed by the Court below has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on April 20, 1984. A timely petition for rehearing *en banc* was denied on June 15, 1984, and a timely motion for extension of filing date for this Petition to October 5, 1984 was filed with this Court on September 6, 1984 and granted by the Court's Order September 11, 1984. This Court's jurisdiciton is invoked under 28 U.S.C. 1254(1) and 2350(a).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This case directly involves interpretations of the First Amendment to the Constitution of the United States and Section 315(a) of the Communications Act of 1934, 48 Stat. 1088, as amended, 47 U.S.C. 315(a), both of which are set forth in Appendix F. To the extent that the reviewing court failed to compel agency action unlawfully withheld, this case also involves Section 706 of the Administrative Procedure and Judicial Review Act, 80 Stat. 393, 5 U.S.C. 706, which is also set forth in Appendix F.

STATEMENT OF THE CASE

The American Security Council (ASC) is a long established non-profit public service institution whose purpose is to improve public understanding of facts and issues re-

lating to the national security of this country. In general, the members of ASC share a common concern that a strong national security of the United States is the most effective deterrent to war and the best method to assure continued peace.

In early June of 1981, CBS undertook an extensive advertising campaign to promote the presentation of a special program series which was to consist of a total of five hours to be presented one hour per night in "prime time" during the week of June 14. The program was entitled *The Defense of the United States* and purported to be a definitive analysis and study of all relevant aspects of the current defense posture of this country. In view of the fact that this subject matter was precisely the area of expertise of ASC, the petitioner as an organization, and John M. Fisher as an individual and as President of ASC, took a very serious interest and viewed the program very closely when it was presented.

Subsequent to its presentation, ASC concluded that although there was some value in the program to the extent that it treated a very timely subject that deserves exposure and serious consideration by the people of this nation, this value was seriously diminished by not only a perceived "slant" of presentation to the position that the country already has more defense capability than it needs (precisely opposite to the position held by ASC) but that it also contained serious and demonstrable errors of fact in several very substantive areas.

Accordingly, on June 23, 1981, shortly after original presentation of the program, ASC wrote a seven-page letter to CBS (App. E at p. 67a), congratulating them on the attention they had paid to the issue but pointing out the bias perceived in the program as well as the several specific

factual errors[1] noted, and requesting that CBS undertake a further program effort to orrect both the factual errors and the overall bias of the program as presented by them. Shortly thereafter, ASC received a two-paragraph response from CBS News avoiding any discussion of the substance of the complaint and simply stating their own general conclusion that they did a good job. (App. E at p. 77a)

Notwithstanding having been put on notice as to misinformation and errors in the program as *originally* presented, CBS then proceeded to *repeat* the program with no correction on the evenings of August 3, 4, 5, 6, & 7, 1981. ASC *again* sought some voluntary relief from CBS[2] subsequent to that repeat presentation of the program and *again* received a very curt two-paragraph rejection and continued refusal to respond to any of the substantive issues raised.

On May 26, 1982, ASC filed a formal Fairness Doctrine complaint with the Federal Communications Commission stating in full detail the essential elements of the complaint, (including the unsuccessful efforts it had undertaken to seek a voluntary dialogue and resolution of the problem with CBS) and an appropriate request for relief

---

[1]The most egregious factual error appeared in Part I where CBS presented two experts to describe the effects and survivability of a nuclear explosion. Both "experts" were longtime members and leaders of pacifist and nuclear disarmament groups (although this fact was not revealed or disclosed by CBS) and their description of the chances of survivability or the value of individual or collective civil defense clearly reflected their pessimistic bias (by e.g. overstating the destructive force of a nuclear explosion by over *100 times* its *actual* effect and by grossly understating the positive results of protective action taken by the civilian population in the World War II raids on Hamburg, Germany.)

[2]The entire exchange of letters is contained in Appendix E at pp. 67a to 81a.

and assistance from the Commission under the Fairness Doctrine. (App. E)

Despite the fact that the complaint and facts stated therein were also supported by the affidavit of John M. Fisher (*not* a required element for a fairness doctrine complaint), the FCC not only refused to grant relief but also refused to even ask CBS to file any response or comments upon the allegations in the complaint (see App. C at p. 18a). Following receipt of the staff ruling, ASC on October 6, 1982, filed an Application for Review with the full Commission requesting review and reversal of the staff action (App. D). On June 23, 1984 the Application for Review was considered by the full Commission in open meeting and after some misgivings were indicated by at least one commissioner,[3] the proposed Memorandum, Opinion and Order rejecting the ASC complaint was returned to the staff for some "revision" and was finally released on July 12, 1984.[4] On August 10, 1983, ASC noted its Petition for Review, CBS was subsequently granted permission to participate as an Intervenor and appropriate briefs were filed by all parties. On April 13, 1984, after comple-

---

[3]Commissioner Rivera indicated that although he had reviewed the FCC's *Fairness Report*, 48 FCC 2d 1 (1974), setting forth rules to be followed in Fairness Complaints, even he wasn't sure where ASC was held to have been deficient

> . . . What must this complainant do. It seems that you and I understand that in this area we parse things very finely and thinly but I must tell you I have a real problem with your [the FCC staff] analysis here and I see a very, very fine line between what they said and what you are asking them to do. . .

[4]Apparently one of the major additions to the original document was the citation to the case of *John Howard*, 55 FCC 2d 777 (1975) which while meant to *buttress* the Commission's decision has been referred to by ASC in its Brief for Petitioner as being so *patently* inapposite as to illustrate a different point, i.e., the lengths to which the FCC will go to seek to *deny* a Fairness Doctrine complaint.

tion of all briefs but prior to oral argument held on April 17, ASC filed with the Court of Appeals a Motion to Apprise Court of Recent Developments to inform the court that the FCC on April 12, 1984 issued a News Release announcing its intention to initiate a "comprehensive inquiry to reassess [the Commission's] policy of imposing general fairness doctrine obligations on broadcast licensees."[5] ACS also pointed out to the court that the FCC was now *openly* questioning whether it was *required* by statute to observe the fairness doctrine or if it could use its own "discretion" to "modify" the fairness doctrine.

At oral argument, ASC continued to stress its position that it had clearly met all procedural rules necessary for substantive consideration of a complaint filed under the Fairness Doctrine, that the actions of CBS were inconsistent with its own obligation as a licensee to respond seriously to serious complaints, and that in failing to grant relief or to even request comments or any response from CBS to the complaint that the FCC had condoned the action of CBS and avoided its *own* obligation to observe and enforce the fairness doctrine as a remedy for the public. ASC also suggested that since the fairness doctrine was the only and exclusive remedy available to the public at large (other than private lawsuits for private defamation) that loss or non-adherence to this remedy would leave the public with *no* remedy at all, no matter how egregious the broadcaster's violation might be.

The court subsequently rejected ASC's arguments and issued its Judgment without opinion affirming the FCC's Decision and rejecting the ASC Complaint.

---

[5]FCC News Release No. 33937, July 23, 1980. The full text of the *Notice of Inquiry,* FCC 84-140, was subsequently released on May 8, 1984.

REASONS FOR GRANTING THE WRIT

The Decision Below is in Conflict with the Statutory Requirements of 47 U.S.C. 315(a) and the Decision of this Court in *Red Lion Broadcasting Co. v. FCC* and is of substantial importance in determining the responsibilities, rights and duties of broadcasters to the public under the First Amendment to the U.S. Constitution.

Unlike the print media, broadcast facilities have been by their very nature both limited and valuable properties. Since left unregulated they would cause electrical interference with each other, they have been subject to Federal regulation since the *Federal Radio Act of 1927* which was subsequently replaced by the *Communications Act of 1934* (47 USC Sec. 151-609) under which communications have been regulated to the present time. Under the general mandate of that Act it has been recognized that not everyone who desires a radio or television facility may have one, that licenses for the use of such frequencies were to be issued by the Federal Communications Commission to applicants meeting the necessary qualifications set by the Act and the Commission, and that those receiving such licenses would have no "property right" in them but would be required to operate as a trustee of the public in the public interest, convenience and necessity and to periodically seek renewal of such licenses. (see Section 307 of the *Act, supra*)

Consistent with that general public interest mandate, the Commission first stated the term of "fairness" required of broadcasters in 1949 in its *Report on Editorializing by Broadcast Licensees,* 913 FCC 1246, where it held that "broadcast coverage of issues of public importance must be adequate and must fairly reflect differing viewpoints." Although the concept was initiated by the Commission

itself, under the general "public interest" mandate, the U.S. Congress used the same "fairness" language when it amended Sec. 315(a) of the Communications Act in 1959.[6] Finally, in 1969 this Court in *Red Lion Broadcasting Company v. FCC*, 395 US 367, specifically reviewed the 1959 Congressional Amendment of the Communications Act and upheld the constitutionality of the fairness doctrine as set forth therein, stating the following:

> There is nothing in the First Amendment which prevents the Government from requiring a licensee to share frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airways.

and further:

> That Congress in 1959 [intended] that the phrase "public interest," which had been in the Act since 1927, imposed a duty on broadcasters to discuss both sides of controversial public issues. In other words, the amendments vindicated the FCC's general view that the Fairness Doctrine inhered

---

[6]At that time the Congress added the following language to the Communications Act:

> Nothing in the foregoing sentence [exempting certain news programming from the equal time requirements for qualified candidate broadcasts] shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. Pub. L. 86-274 Sec. 1, 73 Stat. 557.

in the public interest standard. *Red Lion,* supra at 380.

As of the date that *Red Lion* was decided, therefore, the Fairness Doctrine had been initiated by the FCC (in 1949), codified by the U.S. Congress (in 1959) and upheld by this Court (in 1969). Although Petitioner is unaware of any act subsequently taken by the Congress or by this Court *contrary* to those cited above,[7] and the Fairness Doctrine remains "on the books" now as it did then, it has become the object of such abuse and scorn by the very agency that is charged with implementing its terms, and to such a degree, that it appears to be virtually non-existent as a law or remedy today.

It is axiomatic that the very concept of the fairness doctrine was created for the benefit and protection of the *public,* against the occurrence of any demonstrably unfair practices of broadcasters, taking special note of the fact that broadcasters stood in a special position as trustees of valuable and powerful *public* airwaves. While petitioner by no means suggests that the role of the FCC and the broadcasters that it regulates must in any way be adversarial in nature, we also would suggest that it should not project an 'old-boy' image of the FCC *and* the broadcasters allied *against* the public. Unfortunately, in the case of the Fairness Doctrine that is *exactly* what we see.

As a former broadcaster himself, the present Chairman of the Commission has gone out of his way to show himself as the personal champion of the broadcasters in rid-

[7]In fact, the Court appeared to *affirm* the concept of the fairness doctrine as recently as 1978 in *FCC v. National Citizens Committee for Broadcasting,* 436 U.S. 775.

ding them of their fairness doctrine obligation.[8] Nor has the Chairman stopped at mere rhetoric in his zeal to dismantle the fairness doctrine. Under his leadership the FCC in 1981 formally requested the U.S. Congress to repeal Sec. 315 of the *Communications Act,* including the fairness doctrine[9] and, failing any success there, the Commission has simply followed such a stringent policy in "enforcing" the fairness doctrine that in a *de facto* sense, it simply does not enforce it at all.[10]

Not content with that, the Commission on May 8, 1984 issued a *Notice of Inquiry*[11] to determine how far *it* could go in *officially* dismantling the fairness doctrine *without* congressional approval. Not surprisingly, having issued

---

[8]See, for example, the speech of Chairman Fowler to the National Radio Broadcasters Association in September of 1982 where he proposed "no fairness doctrine, no content guidelines, no political speech rules, zip." (reprinted in *Radio and Records,* September 17, 1981; the feature column by Chairman Fowler that appeared on page A-27 in the July 1, 1982 *Washington Post;* and the feature story on page 70 in *USA Today,* October 4, 1982 where he suggested that

> "[if Broadcasters paid a spectrum fee], then Congress would be encouraged to stop thinking of broadcasters as "public trustees" who are subject to all sorts of government interference on behalf of the 'public interest'."

[9]FCC News Release, "FCC Sets Forth Proposal for Amending Communications Act," September 17, 1981.

[10]In Paragraph 19 of its 1974 *Fairness Report* (48 FCC 2d 1), the Commission stated that while it relied upon "complaints received from interested citizens" it would act to spare broadcasters from the necessity of responding to idle or capricious complaints that did not present some *prima facie* evidence of a violation. At that time it noted that in 1973, out of 2306 complaints, it asked for broadcaster *comments* only 94 times. Since that time, the Commission's concern in sparing broadcasters the "burden" of even *commenting* on complaints has become virtually total.

[11]*Notice of Inquiry* in Docket No. 84-282, FCC 84-140.

the notice of "inquiry" the Commission's professional staff has *already* undertaken an overt lobbying effort with the broadcasters, *which it is supposed to regulate,* and who would be the obvious beneficiaries of repeal.[12] The question occurs that if the Commission represents the interests of the broadcasters, then who represents the interests of the public?

The Instant Case Illustrates the Commission's Avoidance of its Statutory Duty to Enforce the Fairness Doctrine.

In this case, the petitioner tried repeatedly to initiate some discussion with CBS and to seek some reasonable response to the specific complaint it had stated. CBS did not respond to such inquiries as a "trustee" but as an arrogant media power that apparently believed that it did not have to answer to anyone for anything. The Commission in denying the complaint strained itself to claim that the peti-

---

[12]See, for example, the speech by James C. McKinney, Chief of the Mass Media Bureau of the FCC (and, like the chairman, a former broadcaster) to the West Virginia Association of Broadcasters, August 17, 1984, where he decried the burden of the fairness doctrine and stated:

> In closing today I would challenge you [the broadcasters] to consider why it is that the Commission *is leading* the local broadcasters on this issue – re-examination of the fairness doctrine. (emphasis supplied)

and after referring to other recent "successes" in deregulating broadcasting,

> . . . this is not the time to take it easy. The Commission has fired the starting gun but the industry must run the race. We cannot run it for you.

Address to the West Virginia Association of Broadcasters, by James C. McKinney, text printed and made available by the Federal Communications Commission, August 17, 1984.

tioner and its president had not established to the Commission's satisfaction that they were "regular viewers" despite the fact that the President of petitioner included an affidavit attesting to the fact and that the existence and special interest and expertise of petitioner is well known to the Commission.[13] To the extent that the present case vividly illustrates the utter frustration and futility of any member of the public in seeking relief under the fairness doctrine it underscores the very fact that such relief simply does not exist anymore in any practical sense and that those brave or foolish enough to go forward in seeking such relief from the Commission are simply wasting their time and money.

The Effect Upon the Entire Public of this Country.

For private defamation, there is obviously a forum and a remedy available for those who can afford it in State and Federal Courts.[14] For broadcasts that are biased, slanted, or grossly misleading, but *not* defamatory, there is *no*

---

[12]See for example *American Security Council Foundation v. FCC,* 63 FCC 2d 366 (1977), aff'd 197 U.S. App. D.C. 124, 607 F.2d 438 (1979) *en banc,* cert. denied, 444 U.S. 1013 (1980). Note also that in addition, in the instant case, the President of this long-established and recognized public interest organization executed a sworn statement as to their viewing habits. The FCC sought to rely upon the Commission's earlier rejection of an arguably frivolous case (where the complainant had first *admitted* that he *didn't* view the requisite programs and then *after* rejection of his complaint by the FCC said that he *was* a regular viewer but *again* admitted he did *not* view the required programs, *John Howard* 55 FCC 2d 777) to avoid substantive consideration in *this* case.

[14]A course currently being followed by General William Westmoreland against CBS for alleged deficiencies in the CBS program, *The Uncounted Enemy: a Vietnam Deception,* which was presented in early 1982, some months subequent to *The Defense of the United States* and which has been alleged to contain the same type of biased and misleading material as in the present case.

remedy *but* the fairness doctrine. Without the fairness doctrine there would be *no* remedy, no matter how egregious the violation of journalistic standards, honesty and basic fair play.

Notwithstanding the predictable damage of such disinformation left uncorrected, there are those who would claim that there is such an amount of additional broadcast media available that such a problem without a remedy would somehow now be "acceptable." To those that advance the claim that with the advent of cable and satellite television technology there is no longer any "scarcity" of facilties we would first note that there are many areas of this country where such wonderful new media do not exist at *all* and that even in areas where other choices may be available there are vast numbers of people who do not have the financial ability to go beyond "free" television to *purchase* or avail themselves of these new services.

In addition, we would note our agreement with CBS Board Member and ex-FCC Chairman, Newton Minnow, who recently rejected the claim that there was no longer a "scarcity" of stations sufficient to provide grounds for regulation of broadcasting under the First Amendment, stating that

> The test of scarcity is not by reference to the number of newspapers. The test is the number of citizens who want a broadcast license and are unable to obtain one. . . Unfortunately, scarcity still exists.
>
> (*Communications Daily,* Dec. 1, 1983)

We would further suggest that the impact of broadcasting and, more specifically, the impact of *television* broadcasting remains unparalleled in our society today for its weight and importance in affecting and shaping opinion

and ideas.[15] When CBS decided to explain the effects of a nuclear explosion and the pros and cons of individual civil defense by presenting two dedicated anti-nuclear pacifist activists, by *any* definition of fairness it was duty-bound to disclose that fact, but it did not. When they presented erroneous and misleading factual material in that program, it caused harm that is even now incalculable to the degree that vast numbers of people who received that information from a trusted major network *continue* to rely upon it now in reaching decisions affecting the lives and well-being of themselves and their families.

Up to that point, CBS might be forgiven for a mistake or bad judgment that anyone could make. When they ignored the chance to correct it, when they disdained the members of the public trying to help correct the error, when they deliberately *repeated* the misinformation, the remedy of the fairness doctrine *should* have taken effect to call them to account and to correct the record. To the extent that CBS ignored its obligation to the public and to its own audience it was wrong and still should be required to

---

[15]As stated by Tony Schwartz, a top advertising agency executive quoted on "The 30-Second President" segment of a "Walk through the 20th Century" recently aired on PBS:

> I think that television has restructured the way we shop, the way we learn, the way we entertain ourselves and just all the important things in our lives have been restructured by television . . . . We find that the political parties are no longer the communications force in politics . . . the networks are. You might say the three parties are ABC, NBC and CBS.

Mr. Schwartz is in a position to speak with authority on this point. In addition to commercial successes, Mr. Schwartz was responsible for the "Daisy" political commercial aired just once during the Goldwater presidential campaign but which remains one of the most famous political advertisements ever presented, and very well illustrates the awesome power of the medium.

answer for its actions. Far worse in our judgment is the FCC that avoided its *own* statutory obligation to act upon the complaint and at the very *least* ask CBS to respond to those serious charges and allegations.

CONCLUSION

In *Federal Communications Commission v. League of Women Voters of California, et al.*,[16] this Court (in footnotes 11 and 12) recognized that "Critics, including the incumbent Chairman of the FCC" have charged that there is now so much media that the concept of "scarcity" of broadcast media (and therefore the fairness doctrine concept and rationale) is obsolete and that the fairness doctrine may now be impeding rather than furthering First Amendment objectives. We strongly disagree with those views and respectfully submit that the instant case vividly illustrates the use of media power without the responsibility that the fairness doctrine is supposed to assure. In any event we would suggest that if the public is to be stripped of this last minimal remedy against broadcast misinformation and bias presented over the *public's* airwaves, that it should be done in the open and by someone with the jurisdiction to make that decision. The Congress seems to be very disinclined to do so. If this Court determines that the fairness doctrine has indeed become "obsolete," that it is more of a burden than a furtherance of the objectives of the First Amendment, then clearly this Court could do so. The one interested party that can *not* do so, that does not have the power or jurisdiction to "delete" the fairness doctrine is the Federal Communications Commission, and yet we would respectfully suggest that in this area that Agency

---

[16] ___ U.S., ___, Slip Opinion 82-912, decided July 2, 1984.

has arrogated to itself that very action and to the degree that the fairness doctrine has *already* been deleted in a *de facto* sense by the FCC, it has done so without the knowledge or concurrence of the public, the Congress or this Court.

We would respectfully submit that grant of this Petition for Certiorari would correct that condition, that consideration and decision of this case would impact on the rights and expectations of every citizen of this country and that grant of this Petition would therefore be in the public interest.

Respectfully submitted,

ROBERT J. BUENZLE
Buenzle & Hill
1920 N Street, NW
Suite 150
Washington, DC 20036

Counsel for Petitioner.

October 5, 1984

84-556

No.

Office-Supreme Court, U.S.
FILED
OCT 5 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN SECURITY COUNCIL
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

and

UNITED STATES OF AMERICA,
Respondents,

CBS, INC.,
Intervenor.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROBERT J. BUENZLE
Buenzle & Hill
1920 N Street, N.W.
Suite 150
Washington, D.C. 20036
(202) 296-3050

Counsel for Petitioner

October 5, 1984

CASILLAS PRESS, INC. - 1717 K STREET N.W. WASHINGTON DC - 223-1220

INDEX

Page

APPENDIX A

Order of the U.S. Court of Appeals for the District of Columbia Circuit denying re-hearing and suggestions for rehearing *en banc* (June 15, 1984) 1a

APPENDIX B

Judgment of the U.S. Court of Appeals for the District of Columbia Circuit affirming the Memorandum, Opinion and Order of the Federal Communications Commission denying the complaint of the American Security Council (April 20, 1984) 5a

APPENDIX C

Memorandum, Opinion and Order by the full Commission (FCC 83-292) denying the American Security Council Application for Review, adopted June 23, 1983, released July 12, 1983 ..... 7a

APPENDIX D

Application for Review by the full Commission of the staff level rejection of the American Security Council complaint, filed by the American Security Council on October 6, 1982 ..... 26a

APPENDIX E

Complaint of American Security Council against CBS, Inc. for violation of Fairness Doctrine in presentation of *The Defense of the United States,* filed with the Federal Communications Commission on May 26, 1982 ..... 37a

Exhibit 1 to Complaint
Exchange of Letters Relative to ASC's Request for Voluntary Correction by CBS and CBS's Rejection of those Requests 65a

Page

Exhibit 2 to Complaint
Reprints of *CBS vs. Defense* and *The One-and-a-Half Trillion Dollar Misunderstanding* Further Illustrating Factual Error and Bias of the *Defense of the United States* as Broadcast by CBS 83a

Exhibit 3 to Complaint
Transcripts of CBS Five-Part Series *The Defense of the United States* (not reprinted) 132a

Exhibit 4 to Complaint
Affidavit of Mr. John M. Fisher, President of the American Security Council 133a

APPENDIX F

Constitutional and Statutory Texts 136a

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1840 September Term, 1983

American Security Council,
Petitioner

v.

Federal Communications Commission and United States of America,
Respondents

United States Court of Appeals
for the District of
Columbia Circuit

FILED JUN 15 1984

GEORGE A. FISHER
CLERK

CBS, Inc.,
Intervenor

BEFORE: Tamm and Edwards, Circuit Judges, and Haynesworth*, Senior Circuit Judge, United States Court of Appeals for the Fourth Circuit

ORDER

On consideration of the Petition for Rehearing of Petitioner, filed June 4, 1984, it is

ORDERED by the Court that the aforesaid Petition for Rehearing is denied.

Per Curiam

For the Court:

GEORGE A. FISHER, Clerk

By: /s/
Robert A. Bonner
Chief Deputy Clerk

•Sitting by designation pursuant to Title 28 USC § 294(d).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1840 September Term, 1983

American Security Council,
Petitioner

v.

Federal Communications Commission and United States of America,
Respondents

United States Court of Appeals
for the District of
Columbia Circuit

FILED JUN 15 1984

GEORGE A. FISHER
CLERK

CBS, Inc.,
Intervenor

BEFORE: Robinson, Chief Judge; Wright, Tamm, Wilkey, Wald, Mikva, Edwards, Ginsburg, Bork, Scalia and Starr, Circuit Judges, Haynesworth*, Senior Circuit Judge, United States Court of Appeals for the Fourth Circuit

ORDER

The Suggestion for Rehearing *en banc* of Petitioner has been circulated to the full court and no member has requested the taking of a vote thereon. On consideration of the foregoing, it is

ORDERED by the Court *en banc* that the aforesaid suggestion is denied.

Per Curiam

For the Court:

GEORGE A. FISHER, Clerk

By: /s/
Robert A. Bonner
Chief Deputy Clerk

*Sitting by designation pursuant to Title 28 USC § 294(d).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1840 September Term, 1983

American Security Council,
Petitioner

v.

Federal Communications Commission and United States of America,
Respondents

United States Court of Appeals
for the District of
Columbia Circuit

FILED APR 20 1984

GEORGE A. FISHER
CLERK

CBS, Inc.,
Intervenor

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION

BEFORE: Tamm and Edwards, Circuit Judges, and HAYNESWORTH,* Senior Circuit Judge, United States Court of Appeals for the Fourth Circuit

JUDGMENT

This cause came on to be heard on the petition for review of an order of the Federal Communications and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c). On consideration of the foregoing, it is

ORDERED and ADJUDGED, by this Court, that the order of the Federal Communications Commission under review herein is hereby affirmed.

It is ORDERED, *sua sponte*, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* Local Rule 14, as amended on November 30, 1981 and June 15, 1982. This instruction to the Clerk is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

Per Curiam

For the Court:

/s/
George A. Fisher
Clerk

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

*Sitting by designation pursuant to Title 28 USC § 294(d).

APPENDIX C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 FCC 83-292
33388

In re Complaint of	)
	)
American Security Council	)
	)
against	)
	)
CBS, Inc.	)

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 1983; Released: July 12, 1983

By the Commission:

1. The Commission has before it an Application for Review of the Broadcast (now Mass Media) Bureau's September 8, 1982 ruling, filed October 7, 1982, by the American Security Council (ASC).[1]

2. The CBS television network broadcast a five-part series entitled "The Defense of the United States" during prime time for five consecutive nights from June 14-18, 1981. The series was rebroadcast in August 1981. On May 26, 1982, ASC filed a complaint alleging that CBS, in its

[1]A copy of the ruling is attached as an Appendix. The American Security Council describes itself as "a non-profit educational institution whose purpose is to improve and increase public understanding and awareness of facts and issues relevant to the security and defense of the United States."

presentation of "The Defense of the United States," had violated the Fairness Doctrine by not presenting contrasting points of view on the issue of "National Defense: do we need less or do we need more?"

3. In its September 8, 1982 ruling, the Bureau found that ASC's entire complaint focused on the lack of contrasting viewpoints presented within the five-part series. The Bureau noted that the Fairness Doctrine does not require a balanced presentation within a single program or series of programs. The Bureau found that the subject series contained contrasting viewpoints and that no information was provided concerning CBS' overall coverage of the issue in question; that ASC's complaint failed to establish the nature and extent of its members' viewing habits in that it did not specify those time periods when its members were "routine" or "regular" viewers; and that ASC had furnished no extrinsic evidence of deliberate distortion by CBS to support ASC's allegations that the subject program contained inaccurate and misleading material. In this connection, the Bureau stated that "the Commission is not the national arbiter of the 'truth' of broadcast programming or the judge of its wisdom, accuracy or adequacy."

4. In its Application for Review ASC asserts that to sustain that part of the Bureau's ruling regarding the showing required to establish the nature and extent of its members' viewing habits "would not only insult common sense but would also require repeal of the Commission's own policy as stated in its *Fairness Report,* 48 FCC 2d 1 (1974), and as set forth in the *Phelps* Doctrine (*Alan C. Phelps,* 21 FCC 2d 12 (1969))."

5. According to ASC, paragraph 52 of the *Fairness Report* defines the appropriate basis for establishing view-

ing habits in a fairness complaint. Citing this paragraph, ASC asserts that the *Fairness Report* "recognizes the fact that some groups have a particular interest in certain issues and are in a position to state that contrasting views have *not* been presented."[2] ASC thus concludes that its organization "is a specialized group that has a particular interest in the national defense capabilities of the United States and routinely monitors CBS (and others) relative to such matters."[3] Furthermore, ASC asserts that the affidavit submitted by its president, Mr. John Fisher, "precisely" complies with the requirements of the Commission's rules and policies.[4]

6. ASC argues further that where a five-hour prime time program is presented and perceived by its audience "as *the* comprehensive overview of the state of the National Defense of the United States," the program should be internally balanced. ASC contends that Commission

---

[2]Paragraph 52 of the Fairness Doctrine states in relevant part:

> Although some groups having a particular interest in a controversial issue and a licensee's presentation of it have monitored such a station for periods of time and thus have been able to offer conclusive evidence that contrasting views were not presented, the Commission realizes that such a requirement for every individual complainant would be an unduly burdensome one. [*Fairness Report*, 48 FCC 2d at 19.]

[3]ASC indicated in a footnote that it has been involved in monitoring CBS since 1973.

[4]The affidavit of John M. Fisher, states in relevant part:

> That in my role as President of the American Security Council and also as a concerned citizen of the United States, I am, and have been in excess of the past five years, a regular and routine viewer of the news, public affairs and other non-entertainment programming carried by the CBS television network.

policy should be changed to reflect this principle because under present policy it will never "recognize a need for fairness to be applied to a single series or major project no matter how egregious the unfairness or how important the subject matter."

7. ASC alleges that the Bureau erred in two respects. First, it "did not recognize the unrebutted claim in the ASC [c]omplaint by 'a regular viewer' that the opposing pro-defense viewpoint had *not* been presented in CBS' overall programming." Secondly, ASC asserts that the Commission should have made an inquiry of CBS regarding its overall coverage of the subject issues.

8. Finally, ASC argues "that the Commission must consider not only the substance of the complaint addressed to the broadcaster, but the manner in which it was presented, as well as the manner in which the licensee responds." In this regard ASC characterizes CBS' response to their concern as "on the order of 'drop dead'" and "arrogant." As a consequence, ASC requests the Commission to direct CBS to respond substantively to its concerns.

DISCUSSION

9. Having carefully examined the pleadings before us, we conclude that ASC has not presented any new information or additional arguments which would warrant reversal of the Bureau's ruling. ASC has failed to show that in its overall programming CBS did not afford reasonable opportunity for contrasting views. Nor has ASC rebutted the Bureau's finding that CBS presented contrasting viewpoints within the subject series. Therefore, we find that the Bureau was correct in ruling that ASC's complaint did not establish a *prima facie* fairness violation.

10. In reviewing complaints under the Fairness Doctrine, the Commission does not substitute its judgment for that of the broadcaster. Rather, the Commission considers whether the station or network has acted reasonably and in good faith:

> We firmly believe that the public's need to be informed can best be served through a system in which the individual broadcasters exercise wide journalistic discretion, and in which government's role is limited to a determination of whether the licensee has acted reasonably and in good faith. (*Fairness Report*, 48 FCC 2d I, 9 (1974).

11. With regard to ASC's allegation that CBS' overall programming was not balanced, in a letter of June 29, 1981, Mr. Bill Leonard, then President of CBS News, stated to ASC:

> "The Defense of the United States" included a variety of viewpoints regarding national defense issues and we believe that the broadcast was fair and accurate. Moreover, CBS News has provided extensive coverage of national defense matters in other news and public affairs programming.

In a subsequent letter of January 22, 1982, to ASC's counsel Howard F. Jaeckel, Assistant General Attorney, CBS Law Department, stated:

> . . . the extensive coverage given to defense matters in the overall news and public affairs programming of CBS news, and our continued belief that "The Defense of the United States" presented a variety of viewpoints on national defense issues fairly and accurately, we respectfully reiterate our rejection of your request for responsive programming.

12. ASC has not presented any new arguments concerning its assertion that the subject five-part series, in itself, should be internally balanced. In fact, in the *Fairness Report* we specifically stated that we did not want to impose on licensees the burden of proving compliance with the Fairness Doctrine on a program by program basis. Instead, we placed the burden on complainants to establish that a licensee's *overall* programming is unbalanced. The pertinent portion of the *Fairness Report*, 48 FCC 2d at 19-20, states:

> We do not believe this requirement [regarding the necesssary showing for overall programming] to be unduly burdensome, as contrasted to the heavy burden we would place on all stations if we required them to provide evidence of compliance with the Fairness Doctrine based on complaints which assert that *one* program has presented only one side of an issue.

Therefore, as stated by the Bureau, "the Commission will not examine an individual program or series of programs in determining a licensee's overall good faith compliance with the Fairness Doctrine." *See Democratic National Committee v. FCC,* 460 F2d 891, 905 (D.C. Cir. 1972); *Energy Action Committee, Inc.,* 64 FCC 2d 787, 796 (1977). We are not persuaded to change this precedent since to do otherwise would constitute greater Commission intrusiveness into the content of programming than warranted by our Fairness Doctrine policy. In any event, the Bureau in its ruling of September 8, 1982, found that within the subject series CBS had presented contrasting viewpoints on the issue of "National Defense: do we need less or do we need more?" (see *infra,* Apendix at note 4). ASC has failed to furnish any material to show otherwise and, therefore, we cannot find CBS to be unreasonable in

determining that "The Defense of the United States" contained a "variety of viewpoints."

13. We also agree with the Bureau that the complainant has not sufficiently specified the nature and extent of its viewing habits in terms of indicating those periods of time during which it has been a regular member of the CBS television audience. The relevant portion of paragraph 52 of the *Fairness Report*, which ASC has cited in alleging that it has fully complied with Commission precedent regarding viewing habits, reads as follows:

> [A] claim might be based on an assertion that the complainant is a regular listener or viewer; that is, a person who consistently or as a matter of routine listens to the news, public affairs and other non-entertainment programs carried by the station involved . . . One example of a "regular" television viewer would be a person who routinely (but not necessarily every day) watches the evening news and a significant portion of the public affairs programs of a given station. [*Fairness Report*, 48 FCC 2d at 19.]

However, paragraph 52 also states:

> Complainants should specify the nature and extent of their viewing or listening habits, *and should indicate the period of time during which they have been regular members of the station's audience.* [*Id;* emphasis added.]

In adopting paragraph 52 of the *Fairness Report*, we "did not intend that the mechanical repetition of the words 'regular viewer' or the assertion that the complainant 'routinely listens to the news, public affairs and other non-entertainment programs' " would suffice for establishing a

prima facie complaint. *See John Howard,* 55 FCC 2d at 780-81. We have clearly stated that our requirements for establishing a fairness complaint are not merely formal. *See John Howard,* 55 FCC 2d at 781 n.2. We expect a complainant to specify the programming he or she has viewed or heard on a particular station or network and to specify what programming, if any, addressed the various contrasting viewpoints on the alleged controversial issue of public importance. In making this showing, a complainant should indicate those time periods when he or she viewed or listened to the station's programming, including the frequency and length of time. This information should initially be brought to the attention of the station to allow it to assess what actions may be appropriate for purposes of complying with the Fairness Doctrine. If a complainant is not satisfied with the station's response and decides to pursue a fairness complaint with the Commission, then this information should be included in the complaint. Our requirement for viewing habit specificity thus serves to allow a licensee and, subsequently, the Commission to determine whether the complainant has sufficiently established that a licensee's overall programming complies with the Fairness Doctrine. We therefore agree with the Bureau's finding that ASC has merely provided a "mechanical repetition" which, in accordance with the Fairness Report, is not an adequate basis for a fairness complaint.

14. ASC asserts that the Bureau is in error for not recognizing ASC's "unrebutted claim" concerning the lack of contrasting viewpoints within CBS' overall programming. ASC bases this allegation on footnote 7 of its May 26, 1982 complaint, which states:

> It is also noted for the record that ASC is aware of no such "other programming" that could be

> offered by CBS to "balance" *The Defense of the United States* and CBS in its correspondence has offered no such examples.

We note that ASC does not allege that CBS has failed completely to present programming on the issue of National Defense: should we spend more? Instead the foregoing allegation, (which is based on the assumption that the five-part series, in itself, was one-sided) contends that whatever programming CBS has presented on the "more defense spending" side of the issue would be insufficient for purposes of a balanced presentation. However, ASC presents no persuasive argument or information to support this contention. Under the Fairness Doctrine the complainant has the burden of establishing a specific imbalance in the licensee's overall programming. *Healey v. FCC*, 460 F.2d 917, 921 (D.C. Cir. 1972); *Hale v. FCC*, 425 F.2d 556, 558 (D.C. Cir. 1970). Absent detailed and specific evidence of failure to comply with the Fairness Doctrine, the Commission will not require licensees to disprove bare allegations. *Allen C. Phelps* 21 FCC 2d 113 (1969). *See Applicability of Fairness Doctrine in the Handling of Controversial Issues of Public Importance* 29 F.R. 10415 (1964). In this regard the *Fairness Report*, 48 FCC 2d at 19 states:

> . . . we expect the complainant *to state the reasons* for concluding that in its other programming the station has not presented contrasting views on the issue. (emphasis added)

In the instant case, not only has ASC failed to establish imbalance within the subject series, para. 12 above, but it failed to specify the CBS programming it viewed to support its contention that in its overall programming CBS failed to afford reasonable opportunity for contrasting views. An allegation of unbalanced programming must be supported by a proper showing of viewing habits. As

discussed above, ASC did not specify those time periods when it has actually viewed the CBS television network and the frequency of such viewing. Therefore, ASC has presented no information on which to base its allegation that CBS' overall programming presented a disproportionate amount of material on one side of the issue in question. Also, there is no indication it presented such information to CBS. Under these circumstances, we cannot find that ASC has presented a *prima facie* fairness violation.[5]

15. ASC also asserts in regard to paragraph 52 that if a complainant can establish that it is a specialized group with a particular interest and it routinely monitors a network with respect to such interest, this showing would suffice for purposes of establishing the nature and extent of a particular organization's viewing habits. We do not believe this interpretation is correct. The Commission included this language in paragraph 52 of the *Fairness Report* to emphasize that we did not expect all complainants to make the same type of showing that could be made by a specialized group which regularly monitors a station with respect to a particular interest. We did not intend, as ASC has suggested, that this paragraph would allow such a group to circumvent our requirements for specifying their viewing habits by a mere recitation that they are a specialized group with a particular interest. Furthermore, if in fact ASC has been regularly engaged (since 1973) in monitoring CBS with regard to defense programming, then it should have had no problem specifying those

[5]ACS has also asserted that the Bureau erred by not making an inquiry of CBS. We disagree. Where the underlying allegation on which to base such action does not comply with our policies for establishing a *prima facie* Fairness Doctrine complaint, no inquiry is warranted.

periods of time during which it had actually viewed CBS television programming.

16. Finally, with respect to ASC's allegations concerning the unresponsiveness of CBS to its substantive concerns, as we have stated previously, the Commission's role under the Fairness Doctrine is limited to a determination of whether the station or network has acted reasonably and in good faith. *Fairness Report*, 48 FCC 2d at 9. In accordance with Section 326 of the Communications Act of 1934, as amended, and the First Amendment to the Constitution, decisions as to the selection and presentation of program material are left to the journalistic discretion of our licensees. In the instant case ASC has not established a *prima facie* case. Therefore, we cannot find CBS' response to ASC's Fairness Doctrine complaint to be unreasonable.

17. In view of the foregoing, we believe that the Bureau's ruling was correct. Therefore, pursuant to Section 1.115(g) of the Commission's rules and regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATION COMMISSION

William J. Tricarico
Secretary

Attachment

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

September 8, 1982

IN REPLY REFER TO:
8330-D
Cr-734

American Security Council
c/o Robert J. Buenzle, Esq.
1300 Nineteenth Street, N.W., Suite 404
Washington, D.C. 20036

Dear Mr. Buenzle:

This is in response to your Fairness Doctrine complaint (on behalf of American Security Council) against CBS, Inc.[1]

[1]In your May 26, 1982 complaint, you enclosed four exhibits. Exhibit Number 1 is an exchange of correspondence between you and CBS; Exhibit Number 2 contains reprints of two magazine articles; Exhibit Number 3 is a transcript of the five-part series, "The Defense of the United States"; and Exhibit Number 4 is an affidavit of Mr. John M. Fisher, your president.

On July 16, 1982, the American Legal Foundation (ALF) submitted comments in support of your complaint on behalf of its "members and supporters" who viewed the program and who "are regular viewers of CBS." ALF asserts that "the program, 'The Defense of the United States,' was a one-sided presentation of a controversial issue of public importance." It defines the issue to be the level of national defense this country needs. ALF asserts that "[t]here has been no coverage of opposing viewpoints on the CBS network in any manner even approximating the coverage the network gave this program." ALF further asserts that American Security Council and ALF have "not been able to identify any coverage of opposing viewpoints on CBS."

You allege that CBS has violated the Fairness Doctrine in its airing of a five-part series entitled "The Defense of the United States."[2] You assert that CBS "ignor[ed] a substantial and important body of opinion on a very controversial issue of public importance *and* further, that the program contained an inordinate amount of factually inaccurate and misleading material." You identify the controversial issue of public importance as "National Defense: do we need less or do we need more?" You assert that this issue is important and controversial because of the extensive amount of disagreement that existed on it prior to the airing of the CBS program and because of the recent media coverage focusing on the issue. You allege that CBS advocated less national defense spending in the program. You also contend that because CBS offered this five-part series as a complete and thorough examination of the entire national defense issue, the program required a more balanced presentation under fairness principles. Finally, you allege that CBS "stone-wall[ed]" your request to have it correct errors in the program and to provide time for some spokesperson to present the opposing viewpoint; that "CBS as a matter of general policy will never voluntarily admit to a mistake or correct an error"; and that CBS' response to your complaint is not consistent with its public interest responsibilities or with "its obligations under the Fairness Doctrine."

In response to your Fairness Doctrine allegations, CBS asserts that "'The Defense of the United States' included a variety of viewpoints regarding national defense issues" and that "the broadcast was fair and accurate." In addition, CBS asserts that it had "provided extensive coverage

[2]You indicate that this series was "originally presented in June of 1981 and rerun in the following month." However, it is our understanding that the series was rebroadcast in August rather than in July as you suggest.

of national defense matters in other news and public affairs programming."

As you have recognized in your complaint, the Fairness Doctrine requires broadcast licensees to: (1) inform the public by broadcasting discussions of controversial issues of public importance; and (2) afford reasonable opportunity for the presentation of contrasting viewpoints when they present one side of a controversial issue of public importance. In meeting these obligations both sides of an issue need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station or network, because it is the right of the public to be informed which the Fairness Doctrine is designed to assure rather than the right of any individual to broadcast his or her views.

In bringing a complaint under the second part of the Fairness Doctrine, a complainant must establish, among other things, that a licensee or network has failed to afford a reasonable opportunity for the presentation of contrasting views in its *overall* programming.[3]

---

[3]In addition to addressing the licensee's overall programming, a *prima facie* complaint should include the following:

(1) the broadcaster (station or network) involved;

(2) the specific issue of a controversial nature broadcast (complainant should include an accurate summary of the views broadcast);

(3) the date and time when the issue was broadcast;

(4) the basis for the claim that the issue was controversial and of public importance;

(5) copies of correspondence between the complainant and the broadcaster; and

(6)whether the broadcaster has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue. *See Fairness Report*, 48 FCC 2d 1 (974).

Your complaint does not present any showing concerning CBS' *overall* coverage of your specified issue. Instead, your entire complaint focuses on CBS' five-part series and the alleged lack of programming *within* it. You provide no information on CBS' programming before or after the broadcasts in question. Absent detailed and specific evidence of failure to comply with the requirements of the Fairness Doctrine, the Commission will not impose on licensees or networks the burden of refuting every Fairness Doctrine complaint. *Allen C. Phelps,* 21 FCC 2d 12, 13 (1969). Within this framework, the Court of Appeals has stated.

> On a complaint under the Fairness Doctrine, the burden is not only on the complainant to define the issue, but also to allege and point specifically to an unfairness and imbalance in the programming of the licensee devoted to this particular issue. It is not enough for the complainant to allege there is a controversial issue of public importance on which the complainant wants to be heard . . . The essential element in invoking the Fairness Doctrine is that the licensee has not hitherto provided fair and balanced programming on this particular issue, and therefore, and only therefore, can the complainant assert a right for someone to be heard to rectify the existing imbalance. [*Healey v. FCC,* 460 F.2d 917, 921, (D.C. Cir. 1972).]

With respect to the alleged lack of balance within the broadcasts, you request that we implement a new standard for the applicability of the Fairness Doctrine. You assert that where a program is offered "as a complete and thorough examination" on a particular issue, the Fairness

Doctrine should require a balancing of contrasting viewpoints within the program or series of programs, rather than looking to the licensee's *overall* programming. We have previously rejected this argument. It would be unduly burdensome on broadcasters to require such individual program balance because it would serve to discourage the broadcast of "robust, wide-open debate." *See Horace P. Rowley III,* 39 FCC 2d 437 (B/c Bur. 1973), *recon. denied,* 45 FCC 2d 1069 (1974); *Fairness Report, supra; see generally The New York Times Co. v. Sullivan,* 376 U.S. 254 (1964). Requiring balanced presentations within a single program or series of programs would not only discourage licensees from addressing controversial public issues for fear of not adequately presenting contrasting viewpoints within each program, but would also create an administrative quagmire for the Commission. The Commission would have to determine on a program by program basis when the treatment of a particular issue would be considered "definitive" for purposes of requiring a balanced presentation. Thus, the Commission will not examine an individual program or series of programs in determining a licensee's overall good faith compliance with the Fairness Doctrine. *Report on Editorializing by Broadcast Licensees,* 13 FCC 1246, 1255 (1949); *James Batal,* 24 FCC 2d 301 (B/c Bur. 1970).

Moreover, in order to avoid interfering with the broadcaster's journalistic discretion in determining how an issue should be covered, the Commission will not attempt a microscopic inquiry into each and every program or series of programs which may address controversial issues of public importance. *See Fairness Report, supra* at 8; *see*

also CBS v. Democratic National Committee, 412 U.S. 94, 127 (1973).[4]

Your complaint also fails to specify the nature and extent of your viewing habits or indicate those time periods when you have been a regular member of the network's audience.[5] You submit an affidavit indicating that John M. Fisher, president of the American Security Council, has been "a regular and routine viewer of the news, public affairs and other non-entertainment programming covered by CBS television network" during the past five years. Although a complainant does not have to be an "around the clock viewer" of the station to establish himself as a regular viewer of the news, public affairs or other non-entertainment programs, *see Fairness Report, supra,* at 19, a mechanical repetition of the terms "routine" or "regular" with respect to viewing habits, without further particularity, is not an adequate basis for a Fairness Doctrine complaint. *John Howard,* 55 FCC 2d 777, 780-81 (1975); *see also Environmental Defense Fund.* ____ FCC 2d ____ (FCC 82-268, July 9, 1982).

With regard to your allegations concerning inaccurate and misleading material on CBS' presentation, the Commission is not the national arbiter of the "truth" of broadcast

---

[4]Furthermore, even if we were to implement your suggested Fairness Doctrine standard, an examination of the five-part series reveals that CBS presented contrasting viewpoints on the issue of "National Defense: do we need less or do we need more?" In Part III of the series, "Call to Arms," CBS correspondent, Ed Bradley, advocated increased spending for military training, weapon parts and skilled personnel salary levels. Also, in Part IV of the series, "The War Machine," Secretary of Defense Weinberger, Senator John Tower and Admiral Kinnear made statements favoring increased spending.

[5]ALF's claims also suffer from the same deficiencies.

programming or the judge of its wisdom, accuracy or adequacy. Some broadcasts (programs or announcements) involve the discussion of controversial public issues, or involve support or opposition to candidates for public office. In these cases, intervention by the Commission would be especially inappropriate because it might create the impression that the Commission is advocating one viewpoint or attempting to judge the truth or falsity of material being broadcast on either side of a controversial issue, or favoring one candidate over the other. Thus, in absence of extrinsic evidence of deliberate distortion, the Commission will not attempt to judge whether statements broadcast on political or other controversial public issues are true or false, or whether a licensee was justified in either broadcasting or rejecting them. The Commission has stated:

> [I]n a democracy, dependent on the fundamental rights of free speech and press, no [g]overnment agency can authenticate the news, or should try to do so. Such an attempt would cast the chill of omnipresent government censorship over the newsman's independence in news judgment. [*Mrs. J.R. Paul,* 26 FCC 2d 591, 592 (1969).]

In view of the foregoing, your complaint is denied.

Staff action is taken here under delegated authority. Application for Review by the full Commission may be requested within 30 days of the date of public notice of this letter (see Commission Rule 1.4(b) [47 C.F.R. § 1.4(b)] by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by cer-

tified mail. Copies must be sent to the parties to the complaint. See Commission Rule 1.115 (47 C.F.R. § 1.115).

Sincerely,

Jeffrey W. Malickson
Assistant Chief
Complaints and Compliance
Division Broadcast Bureau

cc: Counsel

APPENDIX D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

The Americn Security Council	)
	)
vs.	)
	)
CBS, Inc.	)
	)
for violation of the Fairness Doctrine, 47, U.S.C. Section 315 (a)	)

TO: The Commission

APPLICATION FOR REVIEW

Comes now the American Security Council, by its attorneys, to respectfully request that the Commission review and reverse the action taken by the Commission's Broadcast Bureau under delegated authority wherein it denied the above-captioned Complaint. In support whereof, the following is submitted:

I. Background

In June of 1981, CBS, Inc., presented a special five hour program series over the course of five prime time evenings entitled *The Defense of the United States.* Subsequently, the entire five hour series was presented again in the early part of August of the same year, this time in the "prime" late evening viewing hours (starting at 11:30 p.m. Eastern

time).[1] Perceiving serious factual errors and also a pronounced anti-defense bias in the program (through selection of "experts" belonging to strong Pacifist groups while avoiding identification as such, failure to seek out or present pro-defense views, etc.).[2] Mr. John Fisher, President of the American Security Council, wrote a detailed letter to CBS News respectfully pointing out the serious factual errors and overall antidefense slant of the program and requesting that CBS schedule some further programming to correct the factual errors and present some spokesmen for the other side of the issue (advocating the need for a stronger defense as opposed to the need for less defense as suggested by the CBS program.

Mr. Fisher's carefully drawn and documented seven page letter was rejected by CBS on June 29, 1981, in two paragraphs from William Leonard, then President of CBS News. Rather than respond to any of the specific problems detailed in Mr. Fisher's letter, CBS simply stated their own conclusion that their program was fair and accurate along with a simple conclusory statement (that was as self-serving as it was totally undocumented) that "CBS News had provided extensive coverage of national defense mat-

---

[1]Although the exact dates and time of presentation of this program were included on Page 8 of ASC's Complaint (infra) the Bureau seemed to be strangely unaware of this part of the Complaint and instead siezed upon a general statement in the introductory paragraph of the Complaint and in its footnote one zealously sought to "correct" a "suggestion" as to the dates which would have been clarified very well for them, had they proceeded to read Page 8 of the complaint.

[2]The complete description of the consistent and overall bias in this program is, of course, set forth in the Complaint which is the subject of this Application for review.

ters in other news and public affairs programming."[3] Case Closed. Don't let the door hit you as you leave.

In a futile effort to "go the extra step" to seek some real response and relief from CBS, Counsel for ASC subsequently wrote to them, but with similar results.[4] With the CBS stonewall obviously well in place, it became apparent that if any relief were to be gained it would have to be through other avenues. Although ASC was well aware of the many public statements by the Federal Communications Commission and its individual members as to their distaste for the fairness doctrine and of their request to the Congress to have the fairness doctrine repealed, it was apparent that there was no choice but to initiate its Complaint in that forum, and on May 26, 1982, the Complaint was filed. By letter dated September 8, 1982 (8330-D; C5-734), the Commission's Broadcast Bureau denied the ASC Complaint[5] and the instant Application for Review is being filed in response thereto.

GROUND FOR REVIEW

I. The Action Taken By The Bureau Is In Conflict With Regulation, Case Precedent and Established Commission Policy

Incredibly, one of the Bureau's asserted grounds for denial of this Complaint is that the Complainant did not

---

[3]Despite the rather terse and non-substantive nature of CBS's "response" it was apparently very impressive to the Broadcast Bureau since they quoted both of CBS's conclusions, with very apparent approval, on Page 2 of their letter rejecting ASC's Complaint.

[4]The complete exchange of letters was included as Exhibit 1 to the Complaint.

[5]The first Notice to the Public of this decision was disclosed in an FCC Daily Digest dated September 16, 1982, which indicated the nature of the action and the availability of the text of the action.

satisfy the rule to be considered as a "regular viewer" of the station (network) in question necessary to observe the imbalance in its programming. To sustain the Bureau's assertion here would not only insult common sense but would also require repeal of the Commission's own policy as stated in its *Fairness Report*, 48 FCC 2d 1, and as expounded in the Phelps doctrine (*Alan C. Phelps*, 21 FCC 2d 12, 1969). In this regard we would refer to Paragraph 52 of the *Fairness Report* that recognizes the fact that some groups have a particular interest "in certain issues and are in a position to state that contrasting views have *not* been presented," and even beyond that

> a claim might be based on an assertion that the Complainant is a regular listener or viewer; that is, a person who consistently or as a matter of routine listens to the news, public affairs and other non-entertainment programs carried by the station involved . . . . One example of a "regular" television viewer would be a person who routinely (but not necessarily every day) watches the evening news and a significant portion of the public affairs programs of a given station.

That is the law as it has stood since 1969 and we are not aware of its repeal. Against that rule we would note that ASC *is* a specialized group that has a particular interest in the national defense capabilities of the United States and routinely monitors CBS (and others) relative to such matters.[6] Further, the Complaint was supported by the sworn

---

[6]Indeed, a long-term monitoring of CBS programming initiated in 1973 led to a fairness complaint filed against CBS in May of 1976 and finally resolved by the U.S. Court of Appeals for the District of Columbia Circuit *en banc* in June of 1979. ASC and its members have never ceased such observations of CBS programming.

statement of John Fisher, President of ASC, which attested to the fact that

> he personally has consistently and as a matter of very regular routine viewed the news, public affairs and other non-entertainment programming carried by the CBS network for in excess of the past five years.

Further, at Page 6 it was stated (and attested to by Mr. Fisher's affidavit) that ASC is aware of no "other programming" that could be offered by CBS to "balance" *The Defense of the United States"* and it was further noted that CBS itself had not provided examples of any such programming.

Despite the fact that ASC provided sworn testimony attesting to the viewing of the particular program in question as well as the regular and consistent viewing habits *precisely* as stated in the *Fairness Report*, the Bureau inexplicably seeks to dismiss this Complaint on the incredible ground that such full and precise sworn compliance with the Commission's requirements is *mechanical"* and therefore deficient. We are unaware of the content or adoption of a "mechanical" test by the Commission and assuming that there is none, we would hope that, contrary to the Bureau's finding, a sworn statement of compliance with the published rules and policies on this subject would be sufficient.

II. An Erroneous Finding As To An Important And Material Question Of Fact

ASC noted in its Complaint that the breadth and extent of this five hour program which was so expansively titled and advertised as no less than "The Defense of the United States" was of such importance, by itself, that it should be

subject to fairness scrutiny, even if *arguendo* there were other minor programs or presentations in the CBS schedule that might have been claimed as "balance" to the point of view presented in *Defense* (which we submit was *not* the case.) We still believe that should be the approach here, that the Commission should not ignore a reality that is obvious. CBS presented this program as *the* comprehensive overview of the state of the National Defense of the United States. They presented it that way and the audience perceived it that way. It is questionable if major errors or bias in such a five hour prime time program (repeated less than two months later) could *ever* be "balanced" by a snippet of news here or even a half-hour program buried in some 6:00 a.m. time slot. To the extent that the Fairness Doctrine would not now *ever* recognize a need for fairness to be applied to a single series or major project no matter how egregious the unfairness or how important the subject matter, then we submit that the Commission's policy is unnecessarily narrow and should be changed.

Notwithstanding that point of view, ASC in its Complaint *did* include the necessary sworn statements as to its viewing habits and that *despite* that viewing, it knew of no programming whatsoever that could be offered to seek to balance in any way the less-defense point of view so evident in *The Defense of the United States* (Page 6 of the Complaint). Reference to Paragraph 53 of the Commission's *Fairness Report* (supra) reveals the following:

> The fact that regular viewers or listeners have not been exposed to an opposing viewpoint is obviously not conclusive evidence that the viewpoint has not been presented, but it does indicate that there is a reasonable basis for the viewer's conclusion that such is the case [citing *Phelps*]. *Accordingly, we believe that it is a sufficient*

basis for a Commission inquiry to the station. (emphasis supplied)

This raises two points of error on the Bureau's part. First, they did not recognize the unrebutted claim in the ASC Complaint by "a regular viewer" that the opposing pro-defense viewpoint had *not* been presented in CBS's overall programming and secondly, they did not (to the best of our knowledge) make *any* inquiry to CBS. Beyond the fact that some inquiry to CBS would appear to have been required here by the Commission's own stated policy, it would also have seemed to have been an obvious common sense thing to do in this case, since CBS has already indicated the "extensive coverage" it has provided to balance *The Defense of the United States* and surely reference to such "extensive coverage" (which is, of course, totally unknown to ASC) would have simplified this case.

In any event, failure of the Bureau to recognize the claim of a regular viewer of the news and public affairs programs of CBS, supported by affidavit, that no program or program material balancing the point of view of *The Defense of the United States* had been seen in CBS's overall programming, constituted a serious error of fact by the Bureau which, along with their failure to even seek a statement from CBS, we respectfully submit should be reviewed by the Commission.

III. Policy Consideration

As part of the Bureau's rejection of the ASC Complaint, it very piously proclaimed that it "is not the national arbitor of truth" and for that we are appropriately grateful. We do not want that nor did we suggest it. The Bureau also announced that "the Commission will not attempt a microscopic inquiry into each and every program or series

of programs . . ." and we do not disagree with that either. We think, however, that the statement of these truisms does little to illuminuate one central point: until and unless the fairness doctrine is repealed, it is the duty and obligation of the Commission to consider the facts, and *all* the facts, of any case presented to it on their own merits. And this really does not require the empty recitation of platitudes as much as it does a true and thoughtful analysis of the case before it.

As petitioners, we are not unmindful nor unsympathetic to the fact that many complaints addressed to broadcasters may be little more than general program complaints (how dare you pre-empt the soap operas for a presidential news conference!), crank letters or insulting abusive communications that may well be answered in kind. But broadcasters, no more than anyone else, have no claim to infallibility and as public trustees[7] which we believe they are they have a certain responsibility and accountability to the people for what they broadcast.

Put simply, we think that the Commission must consider not only the substance of the complaint addressed to the broadcaster but the manner in which it was presented as well as the manner in which the licensee responds. If the complaint consists of a general harangue or little more than unsupported personal opinions, then perhaps a terse, general reply would be sufficient. Conversely, where a responsible member of the public submits a complaint pointing out serious factual errors, containing citation and

---

[7]We realize that this concept too is currently under attack, but we submit that it is too basic a concept to be abandoned by administrative fiat, and unless Congress changes the concept of "licensee" of the airwaves that are the property of the people to "owner" of those airwaves, we believe the trustee concept still must be observed.

documentation of the errors, we submit that a response on the order of "drop dead" is not quite sufficient.

In the case at hand, aside from the lack of spokesmen for the pro-defense side and the perceived bias of the program series to the less-defense side of the issue, there were specific factual errors or omissions pointed out to CBS to which they owed a response. Was it forgetfulness that accounted for the fact that their top experts on nuclear explosions and civil defense were *all* members of Pacifist groups? Did they consider these affiliations unimportant enough to fail to disclose them to the public. Could this have any bearing upon their objectivity or upon the perception of their objectivity by the audience? Did they consider the basic and very significant errors in calculating the effect of a nuclear blast (and thereby the possible chance for survival) so insignificant as to not merit a response, let alone a correction?

Constraints of time and space limit further examples but they are set forth in the Complaint as are the exchange of letters (in Attachment 1). We suggest that the rather arrogant response of CBS to the initial Complaint should be considered here. Does the Commission believe that this was a proper example of a licensee communicating with a concerned listener? Was CBS's action here consistent with its obligation to operate in the public interest, convenience and necessity or is it really too too busy these days to bother to respond to anyone more interested in program content than in its saleability.

We submit that it should not be an overwhelming financial burden for CBS to respond in substance to complaints such as filed by ASC here and if they choose not to, we do not think it would be an overwhelming burden to them for the Commission to require such a response. As with

anyone, CBS deserves a certain amount of respect, but it does not deserve reverence or deference from its audience or from the Commission. The lucrative aspects of the CBS network operations are a matter of record and requiring a certain modicum of responsiveness on its part should not only not overburden *them,* but it might also reduce the number of complaints necessarily directed to the Commissions and where such complaints were filed, simplify the issues without requiring the Commission to be, or think it to be, "the national arbiter of truth."

If CBS were to adopt a policy of reasonableness and abandon its fear of communication, we are confident that it would continue to defend itself and its programming where it is right (and properly so) and perhaps once in a while broadcast some corrections, explanations or addendums where they were clearly wrong. Absent such a policy, those aggrieved have no other recourse than to file formal fairness complaints, appeal to *TV Guide*[8] or go directly to court. To force complainants into these avenues of relief is wasteful and makes no sense for anyone. Accordingly we submit that the Commission should give thoughtful consideration to instances where CBS or any

---

[8]Shortly after ASC filed its fairness complaint relative to *The Defense of the United States, TV Guide* published the results of its own investigation of the January 22, 1982 CBS News presentation, "*The Uncounted Enemy: A Vietnam Deception,*" TV Guide's article, "*Anatomy of a Smear: How CBS Broke the Rules and 'Got' Gen. Westmoreland*" contained charges very similar to those made in the ASC Complaint, essentially the use and preparation of facts, material and participants in a way that could most kindly be referred to as "goal-oriented objectivity." *TV Guide* had the benefit of inside memoranda and testimony (normally unavailable to complainants such as ASC) to document their case and CBS was forced to admit to five violations of its own news standards in the presentation of this program. Based upon the admitted improprieties, Gen. Westmoreland filed a $120 million libel suit against CBS, which is now pending.

other broadcaster fails to respond substantively to a substantive complaint, and to direct a resonse in such cases. The Bureau did not respond to this argument in denying ASC's Complaint.

CONCLUSION

Wherefore, for the reasons stated herein, it is respectfully requested that this Application for Review be granted, that the action taken by the Broadcast Bureau under delegated authority be reversed and that the relief sought in the Complaint, viz. that the Commission find CBS, Inc., in violation of the fairness doctrine and that it direct CBS, Inc., to provide at least two hours of prime time programming to correction of its factual errors and presentation of the opposing viewpoint on the issue of *The Defense of the United States,* and such other relief as the Commission may think just and appropriate, be granted.

Respectfully submitted,
THE AMERICAN SECURITY COUNCIL

By /s/
Robert J. Buenzle, its Counsel

October 6, 1982

APPENDIX E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

The American Security Council	)
	)
vs.	)
	)
CBS, Inc.	)
	)
for violation of the Fairness Doctrine, 47 U.S.C. §315(a)	)

COMPLAINT

Comes now the American Security Council ("ASC") by its attorney and submits the instant "Complaint" against CBS, Inc. as a national television network and as a television licensee of the Federal Communications Commission[1] alleging violation of the Commission's fairness doctrine in its presentation of the five part series *The Defense of the United States* as originally presented in June of 1981 and as re-run in the following month. In support whereof, the following is submitted:

I. Preliminary Statement

The American Security Council is a non-profit educational institution whose purpose is to improve and increase public understanding and awareness of facts and issues

[1]CBS is licensee of WCBS-TV, New York; KNXT-TV, Los Angeles; WBBM-TV, Chicago; WCAU-TV, Philadelphia; and KMOX-TV, St. Louis. The basis of FCC jurisdiction over the network *per se* was discussed at length in the FCC Network Inquiry Study in Docket 21049 entitled "FCC Jurisdiction to Regulate Commercial Television Network Practices."

relevant to the security and defense of the United States. In addition to its regular activities in preparing its own publications, film documentaries and other programs and seminars it also regularly monitors the news, public affairs and other non-entertainment programming of the national television networks, including CBS. Although many individual members of ASC regularly view the network programming as stated above, for purposes of this complaint we submit as Exhibit Four hereof the affidavit of John M. Fisher, President of ASC, who verifies and attests that he personally has consistently and as a matter of very regular routine viewed the news, public affairs and other non-entertainment programming carried by the CBS network for in excess of the past five years.

Mr. Fisher also viewed all five parts of the program *The Defense of the United States,* and in response to that program wrote to CBS on June 23, 1981, pointing out several factual errors and a perceived imbalance in the presentation and requesting that CBS undertake some further programming to correct the factual errors and also present opinion on the issue that had been omitted in the broadcast.[2] By letter dated June 29, 1981, William Leonard, then President of CBS News, responded to Mr. Fisher's letter, totally ignoring any comment upon the factual errors of the program but stating his conclusion that the program as presented was "fair and accurate" and that ". . . CBS News has provided extensive coverage of national defense matters in other news and public affairs programming." Mr. Leonard did not provide any examples of such programming.

---

[2]Mr. Fisher did not demand "equal time," nor did he demand time for himself or for ASC. He requested that CBS undertake a two-hour program to correct factual errors and present some spokesman for the opinion omitted from the original program.

After reviewing Mr. Leonard's response, Mr. Fisher consulted with legal counsel and on December 28, 1981, counsel also wrote to Mr. Leonard, in a second attempt to point out the inaccuracies and omissions in *The Defense of the United States* and to seek some voluntary remedy from CBS News. On January 22, 1982, counsel for ASC received a response from Howard F. Jaeckel, Assistant General Attorney for CBS, which again rejected ASC's request for responsive programming on the issue.[3]

Following receipt of Mr. Jaeckel's letter, ASC gave thoughtful consideration to the next logical step, i.e., filing a formal complaint with the Federal Communications Commission. ASC is well aware of the costs in time and money involved in such a procedure and is also well aware that several of the present FCC Commissioners have openly stated their distaste for the entire concept of a "fairness doctrine" of any kind and their opinion that the entire remedy should be abandoned *in toto*. Given such a preconception, ASC is not quite sure how egregious a case would be required to convince even those Commissioners that relief is required here. It is obviously a very heavy burden.

Notwithstanding these heavy burdens attendant to prosecution of a fairness complaint, ASC has concluded that the nature of the problem and CBS's total intransigence on the question leaves it with no choice but to go forward. In presenting this program CBS described the subject as "a matter of life and death." This is by far the most accurate of statements made by CBS and we agree completely. And it is precisely this reason which *requires* that we go for-

---

[3]Copies of the complete exchange of letters are included herewith as Exhibit One. Transcripts of the full five-hour series are included as Exhibit Three.

ward to point out to this agency the serious factual errors and substantive slanted imbalance that permeated this program and to request that this agency direct CBS to disclose the true facts, correct its errors and provide some time for the other side to state its view as to how best to proceed on assuring the defense of the United States. On a matter of life and death, we do not think that to be too much to ask.

II. The Applicable Test

The Commission and the parties hereto are well aware of the historical background and legislative basis for the fairness doctrine and there is no need to belabor the point here[4] except to note that unless and until the Congress decides to legislate it out of existence, the fairness doctrine *does* exist as a remedy for aggrieved viewers or listeners and it *is* the law of the land, to be observed and applied as such. At present, the fairness doctrine requires each broadcaster to:

> 1. devote a reasonable percentage of its broadcast time to coverage of controversial issues of public importance, and
>
> 2. provide a reasonable opportunity for the presentation of conflicting views on such issues.

At this point we might add that it is now and always has been understood and *implicit* upon all broadcast licensees that they make every reasonable attempt to assure the factual accuracy of their presentations. In the instant case the

---

[4]See for example, Pub. L. No. 86-274, Section 1, 73 Stat. 557 (1959); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 373-75 (1969); and *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 795 (1978).

complainant alleges that CBS violated Section Two of the fairness doctrine by ignoring a substantial and important body of opinion on a very controversial issue of public importance *and* further, that the program contained an inordinate amount of factually inaccurate and misleading material, and that CBS made no effort whatsoever to correct the important factual errors and bias which had been brought to its attention.

In order to prove its case against CBS, ASC must submit facts to show the following:

> 1. Identify the station and/or network involved;
>
> 2. the particular issue of a controversial nature discussed over the air;
>
> 3. the date and time of the program;
>
> 4. the basis for the claim that the station has presented only one side of the question; and
>
> 5. whether the station had afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints.[5]

ASC believes that it can meet the burden of the above test and will do so in the following sections of this complaint. There are, however, three other points to consider in determining the proper test by which to judge CBS's performance here. First, although the fairness doctrine does not usually require "balance" within any one program,[6] we note that the program under consideration here

---

[5]*FCC Fairness Primer,* 40 FCC at 600; *Fairness Report,* 48 FCC 2d 1, at 19; *Reconsideration of Fairness Report,* 58 FCC 2d 691, at 696.

[6]See *Fairness Report,* 48 FCC 2d 1 at Para. 51.

was offered by CBS as a *definitive* study of the question under consideration. It was shown on five consecutive prime time hours in one week and shortly thereafter repeated on the prime late night hours (11:30 p.m. - 12:30 a.m. Eastern) of an additional week. CBS offered the program series as a complete and thorough examination of the *entire* national defense issue, and it was meant to be perceived as such. Mistakes, misimpressions or omissions on more isolated or casual endeavors might be more easily tolerated or redressed in other programming. Such is not the case here.[7] It is reasonable to expect that many Americans have made or are making life and death judgments for themselves and our country based upon what they were led to believe *by CBS* was a definitive and accurate treatment of the question. To the extent that it was not, the people should be told and told quickly.

Secondly, the fairness of the treatment in this program should be judged by the standard of excellence offered by CBS itself. If offered as a partial or minor undertaking with limited time and available resources there would undoubtedly be more leeway for error or missing viewpoints. However, when offered as a monumental complete statement on the entire defense issue (as it was advertised) it must be evaluated and judged by that same high standard.

The third special point to be examined here is CBS' reaction to Mr. Fisher's critique of the program. Mr. Fisher's letter is attached to this complaint and it is a very easy matter to verify that it was entirely free of bombast and of any outrageous "demands" upon CBS. Essentially Mr.

---

[7]It is also noted for the record that ASC is aware of no such "other programming" that could be offered by CBS to "balance" *The Defense of the United States* and CBS in its correspondence has offered no such examples.

Fisher pointed out several substantive factual errors and also noted the obvious absence of one side of the opinion on the issue of National Defense. He assumed that CBS would want to correct the errors and that some spokesman for the missing opinion could also be heard, and he suggested that two hours be allocated for such programming.[8] There is no reason such a follow-up program by CBS would have been any less interesting than the original five hours. Mr. Fisher did not demand "equal time" or ask to appear on the program. CBS's response was a stone wall, perhaps best paraphrased by "how dare you question us?" Well, we not only question the substance of the original program but their reaction to the question itself. Is this an example of the good faith, *bona-fide* response that the public is supposed to expect to a good-faith, *bona-fide* inquiry? We think not, and we think that this stone-wall response by CBS should also be considered in judging whether they have violated the letter and spirit of the fairness doctrine.[9]

---

[8]It is noted that a much smaller amount of time would have been needed to present "the other side" of the opinion if it had been presented as part of or near the original program. This fact was recognized recently when the Democratic party rejected an offer of 30 minutes of prime time on the following night in favor of 10 minutes immediately following a 30-minute speech by President Reagan (*Washington Post*, May 30, 1982).

[9]Mr. Michael O'Neill, editor of the New York Daily News recently commented on this increasingly visible arrogance of power in the media:

> 'While there has been an astonishing growth in the power of the media over the last decade or so, I am by no means sure we are using it wisely. the tendency has been to revel in the power and wield it freely, rather than to accept any corresponding increase in responsibility.
>
> The extraordinary powers of the media, most convincingly displayed by network TV and the national press, have been

III. The Issue

The Defense of the United States was presented by CBS on its owned and operated stations and on the CBS television network Sunday through Thursday in prime time (10 to 11 p.m. Eastern) on the nights of June 14, 15, 16, 17, and 18, 1981. The series was repeated at 11:30 p.m. to 12:30 a.m. Monday through Friday on the evenings of August 3, 4, 5, 6, and 7. From the title and promotions of the program, it would appear beyond dispute that it was offered as an exhaustive, definitive discussion of the defense of the United States, including all sides of that question. However, the program as described by Howard Springer, Executive Producer of the program and Dan Rather, anchorman for the program sounds like something else again. As described by them it sounds more like advocacy of a very particular point of view on the subject. From their statements (and as later verified by the program itself) the essential question of the program was: "given the present administration budget for defense, do we really need it or should we spend less?" In an interview with *TV Guide,* Mr. Springer explained that '. . . the opposition [to present defense plans] isn't doing its job." Later he told the *London Economist* that "the Reagan Administration will hate it [the program]" and according to the *Christian Science Monitor* interview "Mr. Springer believes that the reason so much money is being spent on nuclear preparation is that not enough people are standing

---

mobilized to influence major public issues and national elections, to help diffuse the authority of Congress and to disassemble the political parties, even to make presidents or to break them. Indeed, the media now weigh so heavily in the scales of power that some political scientists fear we are upsetting the checks and balances invented by our forefathers.'

up to say 'now wait a minute'." Mr. Rather indicated to the *Christian Science Monitor* that the series is "the most important documentary project of the decade" since it should start debate rolling at a time when "we are about to make the largest peacetime commitment to defense in our history without much debate."

Well, ASC also believes that this subject should be thoroughly debated but it feels that the debate would be more fruitful if *all* the facts were provided and *both* sides of the opinion heard. ASC submits that the CBS program was not an objective analysis as one might be led to believe but rather was a program with a definite point of view, namely that we are spending too much for defense, that there is too much money wasted in defense, that some programs (such as civil defense) are essentially worthless and that the obvious conclusion would be to cut back. This point of view was reinforced by heavy reliance by CBS upon "experts" who were members of various pacifist groups (but not identified as such), exclusion of qualified spokesmen for the other point of view and factual statements or scenarios that were grossly misleading or inaccurate.

There are presently many existing defense systems in place to protect our country. Others are proposed or under consideration. The CBS position as we see it is "given the present defense programs, should we do less." The other side of this issue is "given the present defense programs, should we do more." Factoring out the constant we believe that the thrust of the CBS program was that we should do less on defense and that in presenting their case, they ignored the existence of a very substantial body of opinion that believes the well-being and survival of this country requires an *increase* in national defense efforts.

On a matter of such basic life-and-death importance as this, it is clear that the ultimate direction of this country's defense must rely upon a consensus of the people of this country. However, in order to make a well-informed judgment it is essential that they be exposed to arguments on *both* sides of the issue. Further, the slant in at least one case (whether or not civil defense is worth pursuing) could deprive the individual citizen of the true facts necessary to decide *for himself* whether or not he would consider taking any preventive steps for the protection of himself and his family. This is one of the most serious of the factual errors included in the program and will be discussed in the next section.

In sum then, the issue is "National Defense: do we need less or do we need more?" Further, we submit that this question is, by definition, perhaps the most important and controversial of our time. On the one hand is a body of thought that we are presently militarily vulnerable and that the best and only way of assuring peace is through our own increased strength in all areas of defense. On the other side is a body of thought (thoroughly explored by CBS's program) that we already have more than enough defense, that increased weaponry would only mean increased danger to ourselves and that we should reduce our own defensive development.

CBS's own program is testament to the importance and controversiality of this issue and the argument of "should we do more or should we do less" which existed before the CBS program has raged unabated since that time. Aside from the flood of media attention generated by the program itself, a small sampling of recent media reports on the controversy include:

1. a five column feature story on November 4,

1981, in the *Washington Post* entitled "Toll in A-War is Estimated, Hundreds of Millions Might Die in North America Attack";

2. a seven column feature story on November 12, 1981, in the *Washington Post* entitled "Fear of Frying, the Great Nuclear Phobia";

3. a six column feature story on November 12, 1981, in the *Washington Post* entitled "Civil Defense: Thinking About Unthinkable";

4. a feature column by Mary McGrory on March 2, 1982, in the *Washington Post* entitled "Reagan Aide Offers Laid-Back Description of Nuclear War";

5. publication in March, 1982, of the book *How to Make War* by James F. Dunnigan;

6. Letters to the Editor of the *Washington Post* on March 9, 1982, by readers taking issue with the earlier Mary McGrory column critical of Civil Defense Preparations;

7. a news report in *Time Magazine* on March 15, 1981, entitled "In Sight: Killer Lasers" and describing various developmental weapon systems;

8. a 2-1/3 page feature article in *Time Magazine* on March 22, 1982, entitled "Dangers in the Big Buildup";

9. a two page feature article in *Parade Magazine* on March 28, 1982, entitled "Where the Soviets are Beating Us";

10. a *Time Magazine* cover story dated March 29, 1981, entitled "Thinking the Unthinkable, Rising Fears about Nuclear War";

11. "Must We Match the Russians in Civil Defense?; *Washington Post* column by John M. Weinstein, April 6, 1982;

12. major news articles in *Washington Post* April 1982: "Rep. Rhodes Urges Major Reductions in Reagan's Defense Budget; Haig Issues Warning Against Arms Freeze; Army Seeks Additional Pershing II's;"

13. full page article about Richard Pipes, the United States National Security Council's senior advisor on the Soviet Union which stated in part ". . . nuclear war won't happen, *provided we build up our strength some more*" (emphasis supplied) *Washington Post,* (April 11, 1982;

14. two page article in *Parade Magazine,* April 11, 1982, entitled "Can You Survive World War III?" dealing with civil defense.

While all of the above media articles addressed one side or the other of the issue of our National Defense and included vigorous debate and comments from governmental authorities, scientific experts and community leaders and spokesmen on both sides of the issue, the ever-mounting importance (and controversiality) of the issue heightened still further when, in response to various calls for a freeze on the production and deplyment of nuclear weapons, President Reagan announced at his press conference on March 31 that "on balance the Soviet Union does have a definite margin of superiority," and that a freeze of the existing imbalance would be dangerous to our national security. This ominous revelation of our own existing area of vulnerability further escalated the debate as to whether our best interests and chances for avoiding an armed conflict would be better served by a reduction or by an increase in our existing national defense capabilities.

Although the Commission has already held that "it is generally recognized that 'the question of US-USSR military relations' is a controversial issue of public impor-

tance[10] we submit that the present controversy surrounding the question as to which is the right and best direction to go on national defense is of an importance and intensity beyond any seen in the past. It is *the* critical question of the day and to say the least meets and far exceeds the Commission's criteria for a controversial issue of public importance as defined and protected by the Fairness Doctrine.[11]

IV. The Program

Before examining the program we would like to point out that we will be discussing two areas here: erroneous or misleading "facts," and examples of opinion that were unrebutted by very clear existing counter-opinions. It is obviously easier to state with particularity erroneous fact than to isolate shades of opinion while at the same time trying to prove a negative, i.e., the *absence* of the counter-arguments, the questions or discussion areas that were missing or totally ignored. While we are not in a position to claim a deliberate or conscious bias, we do submit that all of the factual errors, all of the missing opinions and all of the absent areas of discussion reinforce the same recurrent theme of the program; that we are doing too much and spending too much on defense and should cut back.[12]

---

[10]Letter of FCC to *Gaylord Broadcasting Co.*, April 20, 1977.

[11]See *Fairness Report*, 48 FCC 2d 1, 12 (1974).

[12]Presentation of this program by CBS resulted in substantial discussion in the media which, in the case of the general media, was usually focused on the point that it was a 'good idea to discuss this subject'. One excellent serious critique which cites chapter and verse of numerous factual flaws and omissions in the program was *CBS vs. Defense* by Muravchik and Haynes in the September, 1981, issue of *Commentary*. Another article that further discusses the inaccuracy and one-sided approach of the CBS program was the *One-And-A-Half-Trillion-Dollar Misunderstanding* by Benjamin F. Schermmer in

Another point that we would like to stress is that the errors and omissions which are the subject of this complaint are in a very complex and esoteric area which is well beyond the everyday knowledge of the average citizen. As such, the average viewer is extremely vulnerable to being misled and is in no position to challenge the accuracy of what he sees. This again underscores the burden for accuracy in such a program and the importance of the instant complaint.

The tone of the entire series was set at the very opening of the program where the announcer intoned, "It seems we have bought enough weapons and built enough bombs to deter war . . . ." The remark is a response to a taped statement by President Reagan that 'we need to strengthen our forces' but there is really no explanation as to why 'we need to strengthen our forces' and the rest of the program (and the balance of the series) is virtually devoted to telling us why we not only shouldn't strengthen them but should really cut back.[13]

Later in the same program, the announcer introduces a very graphic example of nuclear destruction by describing the effect upon Omaha, Nebraska, of a 15 megaton nuclear attack upon SAC headquarters, 15 miles away. Without denigrating in any way the seriousness of *any* nuclear

---

the August, 1981, *Washingtonian*. Copies of these two commentaries are included herewith as Exhibit Two and are submitted as further illustration and testimony to the gross factual error and bias of the CBS program.

[13]The concept of setting the tone for the program by way of an ominous opening statement was repeated in Part IV where the announcer stated (erroneously) that, "In the next five years, we will spend about 1.3 trillion to defend ourselves. Almost half of that money will go for new equipment." (For a discussion of the gross inaccuracy of this stated "fact" see Page 21).

explosion at any place, almost every aspect of this vivid and horrifying "set-piece" was factually wrong. We could start by noting that there are very few 15 megaton warheads existing in today's Soviet arsenal, and to the extent that there were any at all, it is not reasonable, practical or expected that such a Gargantuan weapon would be directed against any isolated target. The fact is that although the Soviet SS-9 once carried a warhead about that size (actually bigger), the Soviet ICBM force has since been restructured to deliver smaller warheads against more targets. In the CBS scenario, an attack might very well be expected against SAC headquarterrs but the likelihood of a much smaller weapon, the distance to the city of Omaha, and some prior warning are the most important factors in determining the predictable survivability of civilians living in Omaha in such an event. In evaluating these factors, however, CBS played fast and loose with the "facts."

Even proceeding with the very dubious premise of the effect of a "15 megaton attack upon the city of Omaha," the description of such an event by CBS is that it would be virtually hopeless for the citizens of Omaha, that nothing could be done and that 2,000,000 would die regardless of what they did. In the words of Dr. Geiger, CBS's "expert": ". . . anybody that was in a shelter in Omaha would be dry-roasted, as in a crematorium." Given such a statement, one could rationally expect that citizens not only of Omaha but of every other significant city in America would reject any existing or proposed personal or governmental civil defense measures as being worthless and a total waste of money. Such a reaction would appear to be perfectly reasonable . . . if the CBS premise were true. To the extent, however, that the CBS premise was *wrong* and there *were* in fact reasonable steps that could be taken that

would substantially increase the survivability of such an event, then CBS would have done a great disservice in misleading its viewers on this life and death subject. We believe the facts indicate this to be the case.

In examining the CBS position we note first of all that both of its consultants (Drs. Geiger and Tsipis) on preparation of this segment of *Ground Zero* appear to be very committed to the pacifist point of view[14] and while in no way questioning their credentials or integrity, we submit that this fact should have been disclosed to viewers so that they could have more readily weighed the objectivity of the presentation.[15] Further ASC submits that the essential "facts" of this presentation were not correct. To begin with, in describing a 15 megaton bomb, Dr. Geiger claims that it would be the equivalent of 1,050 Hiroshima blasts

---

[14]Dr. Tsipis is a member of the board of SANE, a member of the American Committee for East-West Accord, a supporter of Americans for SALT, a member of the Arms Control Association and the Swedish International Peace Research Institute and spoke at the 1981 First Congress of International Physicians for the Prevention of Nuclear War.

Dr. Geiger is active in the Physicians for Social Responsibility and was a working group chairman for the First Congess of International Physicians for the Prevention of Nuclear War.

In all due respect we do not believe that the two experts selected by CBS are in any way the leading authorities in the U.S. on the effect of nuclear weapons. There are many scientists of equal or greater repute such as Edward Tellers, Eugene Wigner, Harold Agnew or even Harold Brown that would have been obvious objective expert witnesses. Where were they?

[15]In registering its own objection against a recent Report by the National Institute of Mental Health dealing with the relationship of television violence and children's behavior, one of CBS's main complaints was that the Report had been "put together by individuals who came to it with publicly identified positions on [the subject]." (*Broadcasting Magazine,* Pg. 92, May 10, 1982). At least in the NIMH Report, the prior affiliations were disclosed, a procedure which CBS chose not to observe in its own program.

"at the same moment in the same place." Since the computation of increased explosive power of a nuclear weapon increases by the cube root of the increase in megatonnage the *actual* effect of a 15 megaton explosion would be about equal to *10* Hiroshima blasts, making Dr. Geiger's statement about 99% wrong. While we are in no way minimizing the terrible destructive potential of a 15 megaton bomb, we believe that the gross exaggeration by CBS again substantially distorts the perception of the problem with which we are dealing.

Next and most importantly is the description of the predicted effects of such an event upon Omaha. Is there any chance for survival or should everyone just give up? Dr. Geiger indicated that his prediction of everyone in a shelter being "dry-roasted" was based upon "our limited experience of firestorms in conventional war, in Hamburg and Dresden in World War II, the only people who survived were those that fled." Once again this statement is simply not true and in this case there is documentation that directly refutes it, the most on-point being an April, 1953, Report published by the Scientific Advisors Board of the British Home Office which said:

> Hamburg Data: At the time of the Hamburg raids during World War II Hamburg had an estimated population of 1.5 million. An estimated 470,000 of these were within the area subjected to attack and heavy damage. Within this damaged area was the actual firestorm area of about 5 square miles in which there are an estimated 280,000 people. Of these, an estimated 40,000 or 14 percent, who were either in poor basement shelter or outside, were killed by blast or fire. This translates to about 3 to 4 percent of Hamburg's total population at the time of attack. Some 142,000 people survived in basement shel-

> ters or escaped by their own initiative, and 45,000 were rescued in addition to an estimated 53,000 who survived in blast protection 'bunkers.'

This is hardly consistent with Dr. Geiger's view. Other points worth mentioning here are that according to the Department of Defense the radius of severe damge from a 15 megaton ground burst would be estimated at 20,000 feet. Therefore with the target being the SAC base 15 miles distant (or even if a projected city strike were not precisely targeted) there would not be a case of hopeless total obliteration but one where those taking civil defense precaution might survive while those that did not would indeed perish. Finally, we would take serious issue with the figure cited by Dan Rather of 2,000,000 dead from blast, fire and radiation sickness. Such a figure is unsupported and could only approach accuracy if there were no warning at all, the nuclear device were exploded unreasonably close to the center of population, and all people cooperated to make it a point to stand in the middle of the street as far away as possible from any protective structure.

We are indeed fortunate that there is still room for argument on this subject since it has never occurred, but we do not believe that the cause of rational judgments by the citizens of this country as to the merits of increased or decreased civil defense expenditures or as to steps available for their own personal protection are well-served by the one-sided and factually erroneous presentation contained in the CBS program. For people to freely choose to abandon civil defense or their own personal defense is their personal right but for them to do so based upon their belief in CBS's erroneous set of facts is CBS's wrong.

Lastly, on this subject of civil defense we must note that in addition to the choice to be made by each individual

there is also a very profound impact to be expected if the commitment of this country to civil defense is diminished or destroyed and that is the additional vulnerability that it would signal to our potential enemies. The elaborate civil defense precautions undertaken in the Soviet Union are a matter of public record and one would not have to be a total cynic to understand that these measures are as much or more for the collective benefit of the Soviet state as for concern for the welfare of the individual. The simple fact is that the less our population defends itself, the greater will be the potential loss of population in any attack, and the greater the chance that this country, as a country, could not withstand such an attack. To this extent, the failure to provide for adequate civil defense measures not only jeopardizes the well-being of the individual citizen but also increases the temptation for such an attack to occur in the first place. Of all the potential harm caused by the uncorrected errors in the CBS program we believe that the greatest and most direct may well have taken place in this area.

Some other factual errors noted in the program include the following:

1. The statement that "the Soviets have 62 strategic submarines with a thousand warheads." The truth is that although the number of submarines is at least 62, the warheads count is actually 2,000, *double* what CBS said it was (see Department of Defense publication *Soviet Military Power,* Page 57).

2. The statement that "we have 350 B-52's which can now deliver 2,400 warheds" is grossly misleading if not factually incorrect. The truth is that less than half of that number would survive a Soviet first strike and those that did would then

have to penetrate a massive, highly alerted Soviet air defense system. At the same time, the entire group of B-52's is aging and is being reduced by attrition. All things considered, we do not believe it is factually accurate to claim that we have 350 planes that could deliver 2,400 warheads on Soviet targets.

3. "In the next five years, we will spend about $1.3 trillion to defend ourselves. Almost half of that money will go for new equipment." This statement is not even close to being true. First of all, over fifty percent of the U.S. defense budget goes to *personnel* expenses. That leaves less than 50% for hardware expenses of *any* type, i.e. repair, spare parts and maintenance of *existing* equipment as well as procurement of new equipment. The fact is that the figures in the new Federal Budget reveal that for FY 1981 and FY 1982, the "procurement" part of the Defense Budget, which includes spare parts as well as new systems was 22%. We do not have a separate figure for spare parts but if it were *zero,* the figure quoted by CBS would be off by more than *double* the actual figure. If a spare part expenditure of only 5% were assumed, the balance left for new equipment would be around 17% which would make CBS's figure off by *triple* the actual figure.

There are other areas where the facts or opinions may be technically accurate but could be easily rebutted except for the small point that no one was allowed to do so. For example, while it is true that new wings are being built for the C-5A airplane, the reason why is that the Air Force is being forced to extend the lifespan of the plane beyond what was originally intended. The recent recognition of the immediate need for an available Rapid Deployment Force required a massive airlift capability. A modified C-5A was determined to be the quickest answer to the

need, therefore the need for the new wings for existing planes.

Throughout the CBS series it was made to appear that we not only had more than sufficient existing weapons but that it was questionable if we could even "control" the ones we had. At the same time the Soviet threat was downplayed and the entire last hour devoted to the Soviet's "fear" of our initiating hostilities. Well, we do not live in a vacuum, nor do we live in a closed society. We are all well aware that although governments as well as people are not perfect beings, *this* country does not seek to rule the world, and this country would not be so insane or blinded by a lust for power as to initiate a nuclear holocaust. On the other hand we have the Soviets whose track record as defenders of freedom and independence is rather sparse. Conversely, we may note that their traditional predisposition is to occupy areas where they perceive weakness. They have a closed society and their people have no information other than that provided by the State. Therefore, consistent with the Soviet's dovish protestations to Walter Cronkite that filled Part V, ASC believes that the Soviets should be left in peace to "enjoy" the blessings of their communist society and that we would be more than happy to do so. On the other hand, we must really wonder if they feel so benevolent towards us. We also just want to be left alone, but will they. To the extent that we are militarily strong, they will because it is in their best interest to do so. However, to the extent that they perceive us as weak or vulnerable, we would be at their mercy, and Siberia is full of bodies, living and dead, that would attest to the fact that mercy is not a Soviet strong point.

In sum, contrary to the impression of the CBS program, we believe that the United States is presently in a very dangerous position of military inferiority and vulnerability to

the Soviets[16] and that an immediate increase in our defense capability is crucial to our survival. Since it may be impossible to ever match the Soviets in quantitative terms, we must rely upon our longstanding technological superiority to excel in qualitative terms.

This brings us to a final defect in the CBS presentation. Although it was rather grandly titled *The Defense of the United States,* without any footnotes, provisos or limitations, the program for some inexplicable reason totally ignored discussions of *any* kind of such important and timely subjects as the neutron bomb, and emerging anti-missile defense systems such as laser and particle beam as well as the entire subject of space and satellite defense systems.[17] On this point we are once again placed in the difficult position of complaining about the *absence* of material. Doesn't CBS have the right to decide what it thinks is important enough to be included in its programs? Usually yes, but not when they themselves offer a five-part program that is offered and labeled as a *definitive* look at the *entire* question of the defense of the United States. To present such a program and totally ignore the very existence of these emerging weapons systems in favor of protracted discussions of the C-5A's wings or the mission capability

---

[16]President Reagan publicly confirmed as much in his press conference on March 31, 1982.

[17]This significant omission was noted by several reviewers of the program including Tom Shales of the *Washington Post* who wrote a lengthy feature story in the June 14, 1981, edition of the paper entitled "CBS' Epic Defense" and although very favorable for the work presented, notes the 'hole' in the story:

> "For a report that aspires to be comprehensive, 'Defense' is marred by some curious omissions. Little of nothing is said about the ugly potential for warfare in outer space or about the more imminent specter of the neutron bomb. The MX missile gets short shirft for such a volatile topic. . ."

of B-52's is simply beyond explanation. Consideration of these new systems would be an integral and essential part of *any* analysis of the defense of the United States. We know the status of the weapons that we now have, what they can and can't do and the fact that each day, they grow a bit more obsolete. We believe it safe to assume that the Soviet Union will continue its development of new weapons systems utilizing satellite, laser and particle beam technology and it is beyond belief that CBS could present its 'definitive' program about the defense of the United States and not even recognize the *existence* of these subjects, the development of which may account not only for most of the future defense expenditures but also the extent to which this country may assure in some measure its continued safe existence.

Conclusion

In seeking to present a definitive program on the Defense of the United States, CBS set a commendable and demanding goal for itself, and considering the importance of the subject matter, it was an effort long overdue from any commercial television network. We commend them for the effort and we have no doubt that the network and all those involved in the project took the matter seriously and well-understood that this was more than another episode of "The Beverly Hillbillies" and was something that was not only important to their country as a whole but also to them, their own children, annd generations of the future.

We do not believe that CBS set out to dissemble or mislead its viewers on this crucial subject, but we believe that in many respects the program did just that. Everyone is horrified at the prospect of nuclear war. The problem is that there are two opinions as to the best method to avoid

such a tragedy. We believe that the overwhelming consistent theme of the CBS presentation was that we were already going off the deep edge in armaments for national defense and that the more we did, the more the Russians would do, each step of which would increase the likelihood of war. This was the point of view of the CBS program and it was established by every factual error, every unrebutted opinion and every "expert" that CBS selected from a group who zealously shared this point of view. CBS may have started out to present an objective program but somewhere along the way it became more of a network editorial that consistently leaned to its own well-defined point of view. Perhaps the program should have been subtitled "CBS Knows Best." The problem is that although ASC and others on the "other side" are just as worried about nuclear war, they are just as convinced that the best and only deterrence to such an event is through our own *increased* strength. Further, they believe that our present vulnerability is extremely dangerous and that any increase in that vulnerability through a reduction in our national defense efforts will directly increase that existing danger.

Maybe ASC is wrong and CBS is right, but that is not for CBS to judge. That is for the well-informed people of this country to judge. Aside from the direct factual errors in the CBS presentation, we see their presentation as similar to a prosecutor's presentation at a trial. From a vast array of facts and opinions, they selected those that told the story all right, but told it from a point of view. As in a trial, the defense should have an opportunity to review those facts and opinions, with the opportunity to point out the flaws, errors, and inconsistencies of the prosecutor's presentation and to state its own view of the relevant facts and opinions. Having heard *both* sides then, it would be much more likely that the ultimate decision by the viewers

in judgment would be correct. In short, it appears that CBS forgot to include the "defense" in its *Defense of the United States.*

As we stated earlier, we do not think that CBS set out to consciously slant this program but we believe that whether it was conscious or sub-conscious is irrelevant.[18] The point is that severe and serious errors and omissions pervaded the program. Being the product of human beings, we do not think that CBS should be terribly shocked to discover this fact, nor would we leap to any conclusions other than honest human failings and mistakes that can occur in such a presentation.

But occur they did and we are more shocked by CBS's refusal to correct those errors than by the errors themselves. CBS is perceived as a responsible and trustworthy network and should feel some measure of responsibility to respond to that trust. The millions of people who watched *The Defense of the United States* believe that what they saw was true and complete and they undoubtedly formed opinions and decisions based upon what they saw. Very

---

[18]The Commission has stated that:

> "It is a matter of critical importance to the public that the basic facts or elements of a controversy should not be deliberately suppressed or misstated by a licensee. But we must recognize that such distortions are 'so continually done in perfect good faith, by persons who are not considered . . . ignorant or incompetent, that it is rarely possible, on adequate grounds, consciously to stamp the misrepresentations as morally culpable . . . (citation omitted).' " Fairness Report, supra at 21.

We would go further and suggest that the right of the people to get the true facts is superior to any finding of "moral culpability" on the part of the licensee and that the "good faith" of the licensee should be judged by its response and efforts to correct distortions brought to its attention.

few would be reached by newspaper or magazine stories that recount the numerous errors and omissions in the CBS program. Only CBS could conceivably correct the record by presentation over the network to the same audience that saw the original program. Is it naiive to think they would *want* to correct their mistakes? Apparently so, judging from their response to ASC's letters requesting such an action. It is astounding to us that CBS cares so little for the accuracy of its presentation that it is content to let its mistakes go uncorrected and to leave its viewers with less than the whole truth. It makes one wonder as to how outrageous the case would have to be before CBS would ever consider issuing a correction to its errors.

In considering the necessity for the fairness doctrine as a remedy in broadcast journalism, the networks constantly allude to the print media and claim the same privileges: no fairness doctrine for them and none necessary for us. Well, one could only speculate as to how many editors of a reputable newspaper would resist so blindly in issuing a correction when their error is pointed out to them. They know as well as anyone that even the best of people, newspapers, or even television networks may, with the best of intentions, make a mistake from time to time. In the case of individuals, it is not usually such a problem but in the case of any media of mass communications a mistake, honest or not, has the potential to mislead millions.

Of all media, this is most true of the national television networks and of those, CBS carries the greatest responsibility as the most watched and most trusted of the network news presentations. It is precisely because of this trust that CBS should be the most sensitive to accuracy and completeness in its news documentaries but judging by its reactions, it appears that it would rather fight to

avoid correcting its errors than to admit that it ever made them in the first place.

Newspapers issue corrections, print letters to the editor, and in some cases even hire ombudsmen to monitor the newspapers' fairness. CBS, on the other hand simply presents its program and that's it, right or wrong, take it or leave it. Oh sure, they have an excellent program in *60 Minutes* that takes care of *everyone else,* but does not seek out corporate introspection.[19] The bottom line appears to be that CBS as a matter of general policy will never voluntarily admit to a mistake or correct an error no mattter what the circumstances or how genuine and *bonfa fide* the request.[20] We are not aware of infallibility being one of the benefits of a broadcast license and we do not believe that CBS's response to the complaint of the American Security Council was consistent with its responsibilities to the public or to its obligations under the fairness doctrine.

Further, we believe that the factual errors in this program were clearly significant and that these errors together with the consistent lack of a spokesman for the opposing point of view left the viewer with an inaccurate, incomplete, erroneous and one-sided view of the issue of *The*

---

[19]We can only speculate how well *Defense of the United States* would do under the scrutiny of Mike Wallace and his cohorts. Perhaps if there were such a procedure, there would be no need for the fairness doctrine. Unfortunately, that is not the case, we won't see Mr. Wallace grill CBS about its errors, omissions or attitudes and therefore the fairness doctrine remains the exclusive remedy in this case.

[20]Just to show that not all broadcasters follow this pattern, we note that the Spanish International Network responded to viewers' claims of bias in certain newscasts, recognized the validity of the complaints, apologized and took corrective action. *Broadcasting Magazine,* March 29, 1982, pg. 149.

Defense of the United States. We do not think that it should be so onerous for CBS to provide the balacing opinion which was so palpably missing from its original program. We submit that the Federal Communications Commision should remind CBS that its license allows it to serve the public interest as well as make a handsome profit, and that it remains subject to the provisions of the fairness doctrine.

Wherefore, for the reasons stated herein, it is respectfully requested that the Commission find CBS in violation of the fairness doctrine in its presentation of *The Defense of the United States* and direct CBS to provide at least two hours of prime time programming to correction of its factual errors and presentation of the opposing viewpoint on the issue of *The Defense of the United States.*

Respectfully submitted,

THE AMERICAN SECURITY COUNCIL

By: /s/ R.J.B.
Robert J. Buenzle, its Counsel

Dated: May 26, 1982

American Security Council
Complaint Against CBS for
Violation of the Fairness
Doctrine

Exhibit 1

EXCHANGE OF LETTERS RELATIVE TO ASC'S REQUEST FOR VOLUNTARY CORRECTION BY CBS AND CBS'S REJECTION OF THOSE REQUESTS

AMERICAN SECURITY COUNCIL
THE COALITION FOR PEACE THROUGH STRENGTH
John M. Fisher
President

June 23, 1981

Mr. William Leonard
President
CBS NEWS
51 West 52nd Street
New York, New York 10019

Dear Mr. Leonard:

I want to congratulate you and CBS News for the unprecedented attention you gave to national security issues in your five part series, "The Defense of the United States."

We agree that the subject is, as you told the *TV Guide,* "a matter of life and death."

For this reason, it was more important than ever for you to do a true documentary, solidly fact-based with a balance between different viewpoints.

Unfortunately, the series does not meet that standard.

The advocacy journalism intent of the series has been shown in statements made by those involved in producing the series. For example, the Executive Producer, Howard Stringer, explained to the *TV Guide,* ". . . the opposition isn't doing its job."

Stringer succeeded so well in presenting the "opposition" view that he told *The Economist,* "the Reagan administration will hate it."

Stringer told the *Christian Science Montior* that the purpose of the documentary was, "We want to stimulate a debate which . . . Bill Leonard felt had never been started."

According to the *Monitor,* "Mr. Stringer believes that the reason so much money is being spent on nuclear preparations is that not enough people are standing up to say: 'Now wait a minute!'."

CBS anchorman, Dan Rather, told the *Christian Science Monitor* that the series is "the most important documentary project of the decade" and that:

> "We are about to make the largest peacetime commitment to defense in our history without much debate.
>
> "One of the most encouraging things for me is that somebody has finally made the commitment of time and money to help start the debate rolling in every town and city in America."

With this massive effort you have succeeded so well that *The Economist* concludes its story on the series by saying "The current consensus in favour of more for defense could soon crumble unless President Reagan moves quickly to defuse such criticisms."

The fact is that the current consensus *was* arrived at after major debate. There has been more public debate and debate within the Congress and the academic and defense communities on national security during the past several years on defense issues than at any time in recent years. The SALT II Treaty played a major part in stimulating that debate, and the question was certainly debated in the Presidential and Congressional campaigns of 1980.

The Defense Department budget, as revised and increased by the Reagan Administration, is in fact a response to that debate and to the consensus in the nation that emerged from that debate. That consensus expressed in the elections of last November was: our defense posture is inadequate to meet the challenges that might be posed by Soviet military forces.

In deference to the many Americans who indicated that they would like to see the Defense budget increased or national priorities readjusted, it is to be noted that the Congress last year increased the Defense budget over that proposed by President Carter. The Congress this year has also voted to increase the Defense budget over that as proposed by President Reagan.

So, what you are actually doing is to reopen the debate with the hope that you can change the consensus.

In fact, CBS News has rather consistently tried to narrow the range of debate by emphasizing the anti-defense do-less-than-administration-policy arguments while ignoring the pro-defense do-more-than-administration-policy arguments.

This advocacy journalism technique gives a surface appearance of balance because it covers viewpoints favoring administration defense policy as well as the do-less-than-administration-policy viewpoints. The do-more-than-administration-policy viewpoints are almost never covered.

This conscious policy was described by Walter Cronkite in a 1974 interview with Betty Utterback of Gannett News Service as follows:

> "There are always groups in Washington expressing views of alarm over the state of our defenses. We don't carry those stories. The story is

that there are those who want to cut defense spending."

In fact, I wrote one of your predecessors, Richard S. Salant, on October 15, 1974 to report the findings of a major two-year study of CBS-TV News by a team of scholars funded by our Foundation. They found that CBS-TV News was giving the advantage to do-less-than-administration-policy viewpoints while shutting out the do-more-than-administration-policy viewpoints.

At that time, I asked CBS to be fair by henceforth providing "a reasonable opportunity for the expression of the neglected contrasting views" and compensating programming to make up for the past imbalance.

Salant refused my request, so we have had to participate in the debate by our Foundation producing its own documentaries for TV use — which CBS then refused our offer to buy time.

We have still managed a credible showing, with THE SALT SYNDROME, for example, having been shown over 2,000 times on local TV with an estimated audience of 100,000,000 viewers.

This series continues the past pattern of imbalance by never once presenting a do-more-than-administration-policy viewpoint.

For example in Part I: *Ground Zero* the high point of the program is a simulation of what would happen to Omaha if SAC Headquarters were hit with a 15 megaton warhead. Such a situation is portrayed as being helpless — that doing more would not be helpful in any way. That 2,000,000 will be dead regardless of what we do. In fact, Dr. Jack Geiger says "that anybody that was in a shelter in Omaha would be dry-roasted, as in a crematorium."

And, Dr. Kosta Tsipis says that retaliation doesn't work because "If you attempt to kill your enemy by nuclear weapon, you will also die. For the first time, you cannot ensure your own survival by killing the enemy."

The total omission of the "do more" viewpoint leaves out arguments for improved civil defense and anti-missile defense — this, despite the wide publicity given elsewhere to laser and particle beam weapon developments.

By repeatedly doing things like not mentioning the option we have to defend ourselves by going to space with new types of missile defense and by no mention of civil defense, the series loses any claim to balance.

Omitted also was the fact that Drs. Geiger and Tsipis, who "worked with us on preparing the film you have just seen" are anti-nuclear activists.

Dr. Tsipis, for example, spoke at the March 20-25, 1981 First Congress of International Physicians for the Prevention of Nuclear War. He is a member of the Board of SANE, a member of the American Committee for East-West Accord, a supporter of Americans fo SALT, a member of the Arms Control Association and the Swedish International Peace Research Institute.

Dr. Geiger was a working group chairman for the First Congress of International Physicians for the Prevention of Nuclear War and chaired their meeting with the news media. Geiger is active in the Physicians for Social Responsibility, Inc., an anti-nuclear group.

In this sequence, there are also serious errors of commission as well as omission.

For example, Geiger's claim that "anybody that was in a shelter would be dry-roasted, as in a crematorium," is simply not true. He says that "Our limited experience of

firestorms in conventional war, in Hamburg and Dresden in World War II, the only people who survived were those that fled."

Dr. Geiger has said that before, and keeps saying it even though it is simply not true.

One of the several reports dealing with the Hamburg raids was an April 1953 report published by The Scientific Advisors Board of the British home office which said:

> "*Hamburg Data:* At the time of the Hamburg raids during World War II Hamburg had an estimated population of 1.5 million. An estimated 470,000 of these were within the area subjected to attack and heavy damage. Within this damaged area was the actual firestorm area of about 5 square miles in which there was an estimated 280,000 people. Of these, an estimated 40,000, or 14 percent, who were either in poor basement shelter or outside, were killed by blast or fire. This translates to about 3 to 4 percent of Hamburg's total population at the time of attack. Some 142,000 people survived in basement shelters or escaped by their own initiative, and 45,000 were rescued, in addition to an estimated 53,000 who survived in blast protection 'bunkers'."

In Part II: *The Nuclear Battlefield*, virtually the same pattern is repeated with any war moving almost inevitably into the use of tactical nuclear weapons. Tactical nuclear weapons are portrayed as being so destructive to population centers that it sets up a question asked by Dan Rather at the end of Part V, "will our European alliance be

strengthened by a strategy that might force us to destroy Europe in order to save it?"

The do-better viewpoint of deploying neutron warheads in Europe is omitted. Neutron warheads were developed in order to keep most of the damage on the battlefield.

Part II also reported that an attack on NATO by the Warsaw Pact was highly unlikely. The comments that followed were to the general effect that the United States, therefore, did not need to strengthen its forces in Europe and that additional theater nuclear weapons would not help the situation.

The point was omitted, however – and it could have been elicited from the NATO authorities who downplayed the prospect of a Warsaw Pact Attack – that the reason the situation is relatively stable in Europe is that NATO is as strong as it is.

By omitting a key element in the train of logic, the program left an impression which the facts themselves would repudiate. The facts would call for strengthening the NATO posture. But the conclusion that was suggested in the program was that enlarging the U.S. commitment to NATO was unnecessary.

Dr. Geiger said that "Fifteen megatons is 1,050 Hiroshima explosives at the same moment in the same place."

The fact is that it would equal ten Hiroshima explosions because the explosive power of a nuclear weapon increases only by the cube root of the increase in megatonnage.

Ten Hiroshima explosions is bad enough – why exaggerate?

Dan Rather says after the simulated nuclear blast, "The blast from a 15-megaton ground burst would devastate Omaha just that quickly."

The fact is that the radius of severe damage from a 15 megaton ground burst would be 20,000 feet according to weapons effect experts in DOD. That doesn't reach the 15 miles to Omaha.

Rather says that this would result in total deaths of 2,000,000 from blast, fire and radiation sickness. This is gross exaggeration because it describes the worst that would happen only if there was no warning, and everyone stood in the street and made no effort to protect themselves from fallout.

The best summary of the viewpoint presented by the series was stated by Walter Cronkite appearing on CBS-TV with Charles Kuralt at 7:00 AM on June 18, 1981.

In talking about his interview of Brezhnev's speech writer in the series, Cronkite said –

> ". . . he tells you how they look upon our arming and you realize that they see it as totally hostile. They see it as totally aggressive. They see it as intending war against the Soviet Union, planning war against the Soviet Union."

And, Cronkite further justifies the Soviet military build-up by saying, "When you put the Western European and Chinese strength against their strength, they're surrounded – just their strength, and the Warsaw Pact strength, we far outnumber them. And all they're trying to do is get parity."

This is the straight Soviet line and Cronkite put Soviet spokesmen on the air to let them say things like that.

On the other hand, the title of Part IV, *The War Machine,* clearly shows the series attitude toward United States defenses.

Part IV portrays the "military industrial complex" as a conspiracy to sell even more costly and complex equipment which, according to CBS, doesn't work.

As Richard Threlkeld put it, "The Iron Triangle is obsessed with procurement – getting exactly the new hardware it wants and as much of it as it can."

None of us here ever heard of the "Iron Triangle" although Threlkel said that is the "better known" name for the military industrial complex.

The only place we could find the term was in the title of a new book, *The Iron Triangle*, released in the middle of this series on June 15, 1981.

The content of this book closely parallels the themes in Part IV, The War Machine.

Recently, the U.S. government refused to grant a visa to Georgi Arbatov, the head of the Soviet Institute for the Study of U.S. and Canadian Affairs, to appear on *Bill Moyer's Journal*. The reason, as Walter Cronkite admits in the series, is that there is no reciprocity, no way a similar U.S. official could appear on Soviet television.

Yet Cronkite granted Arbatov's assistant and other Soviet spokesmen the unchallenged opportunity for both sides to have misperceptions of the other. But the Soviet society is a closed society, which requires a single line of thought to be expressed by all "voices" within the society. It survives on propaganda. The U.S. is an open society – blessed with views from all sides. Which society is the more likely to have misperceptions?

According to the National Association of Broadcasters, "The keystone of the Fairness Doctrine and of the public interest is the right of the public to be informed – to have presented to it the 'conflicting views of public importance.' "

The reason for this is that democracy can't work if its citizens are poorly informed.

So to meet your obligations under the Fairness Doctrine, and to make it a fair debate, we ask that you give at least one hour to the pro-defense do-more-than-we-are proponents.

And, we ask that you devote at least one hour to correcting misinformation.

If you do honor our request, we ask that you also select some defense policies and weapons systems which you failed to cover, because your series had an unrelieved and depressing rhythm of negativism. Even the things you like were presented only as alternatives or policies.

Sincerely,

John M. Fisher
President

CBS NEWS
A Division of CBS INC.
524 West 57 Street
New York, New York, 10019
(212) 975-2988

Bill Leonard, President

Dear Mr. Fisher:

This is in response to your letter concerning CBS REPORTS "The Defense of the United States," which was produced by CBS News and which aired in five segments on June 14-18. In your letter you assert that the broadcast, while "giv(ing) a surface appearance of balance because it cover(ed) viewpoints favoring administration defense policy," ignored "the pro-defense do-more-than-administration-policy arguments" regarding national defense. You demand that in order for CBS News to satisfy its fairness doctrine obligations, we provide "at least one-hour to the pro-defense-do-more-than-we-are proponents," and that we provide an additional hour to "correcting misinformation" which appeared on the broadcast.

"The Defense of the United States" included a variety of viewpoints regarding national defense issues and we believe that the broadcast was fair and accurate. Moreover, CBS News has provided extensive coverage of national defense matters in other news and public affairs programming. In sum, we believe that CBS News has complied fully with its journalistic and legal obligations and you have not demonstrated otherwise. Accordingly, we re-

ject your request that we provide additional compensatory programming.

Very truly yours,

signature /s/ Bill Leonard

Mr. John M. Fisher, President
American Security Council
499 South Capitol Street
Washington, D.C. 20003

June 29, 1981

LAW OFFICES
ROBERT J. BUENZLE, CHARTERED
Suite 600
1110 Vermont Avenue, N.W.
Washington, D.C. 20005
(202) 822-8431

December 28, 1981

Mr. William Leonard
President
CBS News
51 West 52nd Street
New York, New York 10019

Dear Mr. Leonard:

On June 23, 1981, John M. Fisher, President of the American Security Council, wrote to you relative to your presentation of the five part series "The Defense of the United States." At that time, Mr. Fisher stated his very serious concern over certain perceived factual inaccuracies in the program as well as the fact that the program appeared to take an advocate's position against sustained Defense spending while totally ignoring the other side of the question i.e., whether this country is really doing *enough* in preparation of defense (including civil defense) of the United States.

In the course of Mr. Fisher's letter, he outlined important factual errors in your program as well as several specific well-defined examples of the other side of the National Defense issue which were virtually ignored in the program (the arguments in *favor* of an increased and improved civil defense and an improved anti-missile defense

being perhaps the two most glaring examples), and requested that CBS News undertake to inform its audience of both the factual errors in its original broadcasts as well as some discussions of the unheard arguments in favor of an *increase* in civil as well as military defense capabilities for this country (the full basis of Mr. Fisher's complaint is set forth in his June 23rd letter to you and will not be repeated here.) On June 29, 1981, you wrote to Mr. Fisher and summarily rejected his complaint, ignoring his examples of factual error and claiming that "CBS News has provided extensive coverage of national defense matters in other news and public affairs programming."

In all due respect we would have to challenge you to provide *any* illustration of any news or public affairs program or program segment presented on CBS within this year of 1981 *or* the entire preceding year of 1980 or beyond, that could conceivably balance the ten hours recently devoted to *your* position on "The Defense of the United States". We would most certainly agree with you on one thing: that the subject under discussion is indeed "a matter of life and death." Such being the case, the question of how best to approach and handle such an apocalyptic question attains even greater importance, perhaps to take its place as *the* most important question of the day. Assuming that to be so, then it appears to be beyond dispute that both sides should be heard on this question. The anti-nuclear activists who participated on your program certainly have a right to their opinion, but ignoring the *other* side of the opinion will not assure their accuracy. If the opposing opinion had no merit, it should fall from its own weight, not from being excluded from the debate in the first place.

In sum, we must inform you that the American Security Council continues to consider this matter to be of the ut-

most gravity and that, absent some remedial action by CBS News, believes that the public will continue to be left misinformed as well as uninformed on essential and important aspects of the security and defense of their country. The importance of a timely correction of this program cannot be overstated (for example, based on your program it would be reasonable to expect the people of "Omaha" to give no further thought to Civil Defense since it is "hopeless", but their decision might be quite different were they to be apprised of the very substantial survivability factor for those properly prepared for such a disaster), and it is for this reason that we are requesting that you reconsider your prior rejection of Mr. Fisher's request.

It is the concern of the American Security Council that the people of this country be fully and accurately informed on this vital question and it is this concern that has required the instant request. Should you wish to discuss the matter further, we would be glad to do so. We very much hope that you will recognize the merit in our request and that you will reconsider your prior position on this matter, since we believe that would be in the best interests of the people of this country. We must note, however, that the American Security Council considers this matter to be of such grave significance that, in the event CBS News continues to refuse to consider any action to correct the factual errors and unbalanced presentation included in "The Defense of the United States," the American Security Council will proceed to file a formal complaint with the Federal Communications Commission based upon the failure of the CBS Network and its owned and operated stations to observe the requirement embodied in the Fairness Doctrine that it "provide a reasonable opportuni-

ty for the presentation of conflicting views on controversial issues of public importance."

Very truly yours,
THE AMERICAN SECURITY COUNCIL

BY: /s/
Robert J. Buenzle, Counsel

RJB:tc
bcc: Mr. John M. Fisher

CBS
CBS Inc., 51 West 52 Street
New York, New York 10019
(212) 975-4321

Law Department

Dear Mr. Buenzle: January 22, 1982

I am replying to your recent letter to William Leonard, president of CBS News, in which your request that CBS News reconsider its previous rejection of the request of John M. Fisher, President of the American Security Council, for responsible programming in connection with our five part broadcast, CBS REPORTS: "The Defense Of The United States." In your letter, you state that if CBS does not act favorably on your request, The American Security Council intends to file a fairness doctrine complaint with the Federal Communications Commission.

In our judgment, neither your letter nor Mr. Fisher's earlier correspondence set forth any informatin which would indicate that CBS News is not in full compliance with its fairness doctrine obligations. In light of the above, the extensive coverage given to defense matters in the overall news and public affairs programming of CBS News, and our continued belief that "The Defense Of The United States" presented a variety of viewpoints on national defense issues fairly and accurately, we respectfully

reiterate our rejection of your request for responsive programming.

Very truly yours,

/s/

Howard F. Jaeckel
Assistant General Attorney

Robert J. Buenzle, Esq.
Suite 600
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

American Security Council
Complaint Against CBS for
Violation of the Fairness
Doctrine
Exhibit No. 2

REPRINTS OF *CBS vs. DEFENSE AND THE ONE-AND-A-HALF TRILLION DOLLAR MISUNDERSTANDING* FURTHER ILLUSTRATING FACTUAL ERROR AND BIAS OF THE *DEFENSE OF THE UNITED STATES* AS BROADCAST BY CBS

CBS vs. Defense

Joshua Muravchik and John E. Haynes

This past June CBS-TV News broadcast "an unprecedented documentary project, more ambitious than any CBS News has undertaken," entitled *The Defense of the United States*. The series ran for an hour of prime time on each of five consecutive nights. So pleased was CBS with its product that it took the unusual step of rebroadcasting the entire series in August.

The series' anchorman, Dan Rather, termed it "the most important documentary project of the decade." The reviewers agreed, the Washington *Post* hailing the series as "the first documentary epic in TV history," *Time* calling it "not only the longest and most expensive network documentary ever but perhaps the most thoughtful and incisive TV examination of the American military as well," and the *Economist* (London) solemnly allowing that "CBS has shown that American television, when freed from the crass commercialism which dominates so much of its output, is a match for anyone."

Official CBS spokesmen described the series as "balanced," "fair," "accurate," and maintained that it expressed no point of view. Its executive producer, Howard Stringer, qualified this somewhat by acknowledging that the broadcasts "did draw some conclusions." These conclusions

---

JOSHAU MURAVCHIK is a research associate at Georgetown University's Center for Strategic and International Studies in Washington, D.C. His articles in COMMENTARY include "Turnabout in the Senate" (November 1980) and "Kennedy's Foreign Policy: What the Record Shows" (December 1979). JOHN E. HAYNES, who holds a doctorate in American history, is a former associate staff member of the Senate Armed Services Committee.

were expressed by the *Christian Science Monitor* (which also lauded the series as "masterly," "skillful," and "thoughtful!"):

If the series has one overwhelming message, it is the one that emerges time and time again through each segment but is finally verbalized in the concluding segment. . . . "You can't buy peace simply by spending more and more on arms."

This jibes with statements by people connected with the show itself. Thus, Howard Stringer told the *Christian Science Monitor* that "We want to stimulate a debate which . . . [CBS News President] Bill Leonard felt had never been started. . . . Here we were and are about to embark on this colossal defense spending spree with few questions asked and very little debate." The theme was echoed by Dan Rather who said: "We were about to make the largest peacetime commitment to defense in our history without much debate." Rather hoped the series would "start the debate rolling in every town and city in America." According to Stringer, so much money is being spent on U.S. nuclear forces because not enough people are standing up to say "Now, wait a minute!" The problem, Stringer told *TV Guide*, is that "somehow the opposition just isn't doing its job."

CBS's "message" was not lost on partisans in the defense debate. The staunchly pro-military American Security Council wrote to demand air time for a rebuttal to the series. Others, considerably less "hard-line," were also put off by the series. In an essay in the Washington *Star*, John Kester, who served as special assistant to Secretary of Defense Brown in the Carter administration, wrote that CBS had provided an example of "the least honest and most seductive" of the efforts of "the old anti-defense

crowd" to "offer a different set of explanations to support an answer that has hardly changed at all: that money spent on defense is wasted."

On the other side of the defense debate there were cheers. The *Christian Science Monitor* observed that while "militant individuals . . . may find good reason to object to this series . . . anybody searching for serious peaceful solutions to the world's problems will welcome [this] innovative use of the public airwaves." The *Village Voice* columnist Alexander Cockburn exulted:

> The mass media are beginning to swing [against defense spending]. After seven years of almo[st] total silence, we may soon see a return to . . . grim descriptions of cost-overrun scandals and other depredations of the milit-ind-cplx [*sic*]. Next week . . . CBS is airing a five-part series . . . which should sober people up in fairly short order.

If it is clear that CBS, despite its perfunctory denials, *was presenting a point of view,* it is also clear that that point of view is rather far from the mainstream of the U.S. defense debate.

The series opened with a film of Ronald Reagan delivering a campaign speech. He is saying:

> It is time for us to start a build-up, and it is time for us to build that to the point that no other nation on this earth will ever dare raise a hand against us, and in this way, we will preserve world peace.

The exact same segment was repeated in the final program of the series. The message was clear: it is Reagan's build-up that prompted CBS's "questions." Yet the point of view

adopted by CBS was almost as distant from that of the Carter administration as it was from the Reagan administration. There is much less difference between the mainstream of the Democratic and the Republican parties today on defense issues than there is between CBS and the bipartisan defense consensus which has emerged on Capitol Hill.

This discrepancy is what explains CBS's astounding assertion that there has been "no debate" on defense issues when in fact the last few years have been a time of unusually intense discussion. In 1979, the Carter administration's quest for ratification of its SALT II agreement occasioned an unprecedented debate on U.S. defense policy. (By contrast, in 1972, the SALT I agreements were approved by votes 88-2 amid, in the words of the *Congressional Quarterly*, "little controversy.") Throughout 1980, foreign policy, including defense concerns, was named second only to the economy by voters asked to list the most important problem facing the country. Indeed, for a few months early in 1980 foreign policy surpassed the economy as the number-one issue. These survey results should have been known to CBS: the polls that reported them were CBS News polls. Moreover, it was not a secret that the heart of the 1980 Carter reelection strategy was to question the wisdom of Reagan's views on defense issues.

When confronted with these facts, Stringer has justified the assertion that "there wasn't much of a debate" in the presidential campaign on the grounds that the differences between Carter and Reagan were small. "Both presidential candidates last year were enthusiastically endorsing increased defense spending," said Stringer to the *Christian Science Monitor* — thereby suggesting as well the distance between CBS and the center of the defense debate in the U.S.

An indication of CBS's slant can be gained from noting whom it selected as advisers and interviewees for the series. In the dramatic opening-night program, on strategic nuclear weapons, the longest interview was a joint one with Dr. Jack Geiger, identified only as a professor of medicine at CCNY, and Dr. Kosta Tsipis, identified as a professor of physics of MIT. The two professors expostulated in exquisite detail on the horrors of nuclear war, with Dan Rather confiding that "both men worked with us on preparing the film you have just seen" of a simulated nuclear attack on Omaha, Nebraska. After the discussion of the environmental and health effects of nuclear war, Rather asked Geiger and Tsipis whether the Soviet Union believes it can fight and win a nuclear war. Both men explained their strongly held convictions that Soviet leaders do not believe this.

One may wonder what qualified these two men of science to comment on Soviet military policy. Apparently CBS felt that their views were worthy of air time because the two are not merely scientists but are also active in the "peace movement," a biographical datum which CBS withheld from its viewers. Tsipis is a member of the board of directors of SANE and is an editorial adviser and prolific contributor to the *Bulletin of the Atomic Scientists* (in its November 1976 issue he offered this analysis of why the arms race is so intractable: "The Soviet Union appears to base national security on equality in strategic weapons with the United States, while the United States feels secure only when superior"). Geiger is active in Physicians for Social Responsibility and in International Physicians for the Prevention of Nuclear War, a group consisting primarily of American, British, and Soviet doctors working, so they have announced, to inform their respective goverments about the horrors of nuclear war. The group's

first conference was featured in the June-July 1981 issue of the *Bulletin of Atomic Scientists*, which included an article by Geiger and a lead photograph of conference participant Georgi Arbatov. (Arbatov is the head of the Soviet Institute of the USA and Canada. His expertise in the field of medicine was, until the conference, one of Moscow's best-kept secrets.)

Another interviewee who, like Tsipis and Geiger, was not fully identified by CBS was Roger Molander. Molander expounded on the superfluity of weapons in the U.S. strategic arsenal. He was introduced by CBS as someone who had served in the Nixon, Ford, and Carter administrations (all true), but what CBS did not mention was Molander's current occupation as executive director of Ground Zero, a new coalition of liberal, church and peace groups organized to resist a build-up of U.S. strategic forces. Curiously, the CBS segment on strategic nuclear weapons was titled *Ground Zero*.

Another person who figured in the series was Walter Pincus, listed in the credits as "adviser." Pincus works both for CBS and for the Washington *Post*. In 1977 Pincus's "advocacy journalism" in the pages of the *Post* helped to stimulate opposition to the Carter administration's plans to deploy neutron weapons.

The most revealing glimpse of the series' general attitude was afforded by its choice of a label for the process of arms procurement, the subject of the fourth episode and in many ways the heart of the series. Said CBS's Richard Threlkeld at the beginning of the show: "The Pentagon is the military part of the military-industrial complex, better known as the Iron Triangle: . . . the Pentagon . . . The Congress . . . the defense contractors." The term "iron Triangle," it turns out, was not coined by CBS but is the ti-

tle of a book officially released the very week of the CBS broadcast by a group called the Council of Economic Priorities. The book's author, Gordon Adams, is president of the board of the Corporate Data Exchange, a New Left research organization. The book was financed, according to its acknolwedgments, by, among others, Stewart Mott and the Samuel Rubin Foundation, the latter being a principal source of support for a variety of New Left causes.

The council on Economic Priorities was not the only beneficiary of Stewart Mott and the Rubin Foundation on which CBS appears to have relied as a resource. The Center for Defense Information (CDI), a project of the Fund for Peace which receives support from both Mott and Rubin, is a group which works to stimulate congressional opposition to virtually all new U.S. weapons programs and to persuade Congress that "The U.S. needs a more realistic view of the Soviet Union than the obsessive one that has dominated U.S. foreign policy for many years." Last year CDI issued a report purporting to demonstrate that Soviet influence in the world has reached a new low. CBS not only repeated this theme, but backed it up with the same erroneous data used by CDI.

Of course not everyone put on the air by CBS was of the same political stripe. The series included interviews with defense specialist Jeffrey Record, a non-dove, and with Senator Gary Hart (D-Colo.), a former dove, but both Record and Hart were questioned exclusively on issues on which they disagree with the defense establishment. There was also a good deal of footage of military brass, but much of this had the same quality as the Reagan footage — to serve as a foil for CBS's biting critiques. In case any viewer misunderstood how the thoughts of military spokesmen ought to be regarded, CBS's interviewer Bob Schieffer spelled it out for them: "No general or admiral is ever likely to say enough is enough."

The insistent ideological slant which informed CBS's presentation led it to make many erroneous or distorted assertions, but the most important error was one of omission. In five hours given to examining the plans for a U.S. military build-up, there was no mention – *none* – of the Soviet build-up which precipitated it.

The Soviet build-up was discovered long before the election of Ronald Reagan. The annual report of the Defense Department, delivered by Secretary of Defense Harold Brown in early 1980, gave the authoritative view of the Carter administration:

> Whether the two defense efforts are measured in the U.S. or the Soviet economy, the general direction of the Soviet programs in real terms is the same – upward. . . .As far as we can tell, the effort accounts for 11 to 14 percent of the Soviet GNP, although some experts put it at 15 percent or higher. Relative to the United States, the Soviet defense effort now appears to be about 50 percent higher measured in dollars, and around 30 percent more measured in rubles. . . .
>
> Even more impressive than the growth in the overall defense budget is the expansion in the investment that has gone into research. . . , procurement, and military construction. [Such] . . . investments . . . exceed those of the United States by about 85 percent. . . . We had hoped that well-balanced, secure, second-strike strategic nuclear forces would satisfy the security needs of the Soviet leders in that area. They have gone well beyond such a capability, however. . . .They appear, indeed, to be aiming toward some sort of war-winning capability with these forces, however futile that attempt may be.

But the facts of the Soviet build-up, clear as they were to the Carter administration, as well as to its successor, were lost on CBS. Or if CBS was aware of them, it spared its viewers the painful news.

Often CBS seemed to be trying to prevent any hint of the Soviet build-up from slipping out. More than once the network told its viewers that the U.S. has more nuclear warheads than does the Soviet Union, but other measures of nuclear strength, which are at least as important as numbers of warheads and in which the Soviet arsenal has far surpassed that of the U.S., were not mentioned at all. CBS referred to the "giant" MX missile without ever noting that it will only be about as large as "small" Soviet ICBM's and not nearly the size of the large ones.

The dramatic highlight of the series was a simulation (on which CBS spent $100,000 for special effects) of the detonation of "one 15-megaton bomb" on Omaha, Nebraska. The American Security Council protested that CBS's scenario was implausible: a 15-megaton bomb is a real monster, and the Soviets would never expend one that size just to destroy SAC headquarters at Omaha. But CBS officials insisted that the Soviet arsenal does indeed contain at least a few warheads of that size. This is probably true. What went unmentioned in all this was the megatonage of *American* missiles; CBS never told its viewers that there is nothing nearly the size of 15 megatons in the U.S. arsenal. The submarine-based weapons which, as CBS pointed out, provide the U.S. with its most reliable retaliatory power are one three-hundredth that size.

It was not merely by such omissions that CBS sought to spare its viewers the news of the Soviet build-up. "The largest peactime military budget in our history" is being rationalized, Dan Rather noted skeptically, by reference to

"an enemy who, we're told" is not always true, and the series presented information to show why – information which in many instances was false.

The Soviet submarine fleet is the largest in the world, but Walter Cronkite implied that there is little need for the U.S. to worry about it, since "their submarines are plagued by ports that are frozen in most of the year." In fact, the major Soviet bases on the Kola and Kamchatka peninsula provide year-'round facilities. Years ago the Soviet surface navy was equipped and structured to conduct short-range operations in the Baltic and North Seas. In the last decade, however, the Soviet Union has built large surface combatants and aircraft carriers which now enable the Russians to fight on any ocean and deliver military power to any continent. This naval build-up disturbs some Americans, "but," said Cronkite reassuringly, "only 10 percent of these ships are ever actually out at sea." One would be better assured if Cronkite could guarantee that in the event of war the Soviets would only use 10 percent of their fleet.

The USSR has an armed force of 4.8 million, and a mandatory draft which requires of all young men two years of military training with further years in reserve units. The United States has an armed force of 2.1 million volunteers, and most American young men never receive a day of military training. CBS, however, listed Russian military personnel at 3.5 million, which was roughly accurate as of fifteen years ago, before the Soviet build-up began. Again Cronkite had reassuring news. Of the Soviet forces, "half-a-million men . . . are trained as border guards or construction workers." He did not mention that Soviet border troops are equipped as infantry with automatic weapons, armored vehicles, light artillery, and combat aircraft. (During World War II the Soviet Union

used its border troops as regular combat formations of the Red Army.) Soviet military "construction workers" are the equivalent of the U.S. Army's engineer battalions, or the Seabees. Construction troops are military assets, not a uniformed job corps.

Just as the figure for the size of the Soviet armed forces was fifteen years out of date, so too was CBS's information on the quality of the Soviet military equipment. In the segment about weapons procurement, correspondent Richard Threlkeld delivered this statement without qualification or substantiation.

> Naturally, there's a lot we don't know about Soviet weapons, but what evidence there is seems to indicate that their weapons really aren't all that sophisticated — certainly not as sophisticated as ours. . . . In war planes, as in warships and tanks and the rest of their hardware, the Russians still seem to be going for quantity over quality.

The truth is that the Russians have been going for both quantity and quality, and that the once-solid U.S. lead in quality has dissipated. According to a special report to the Congress in 1978 from the Carter administration's Undersecretary of Defense for Research and Engineering, William J. Perry, of thirty-three principal categories of military technology the U.S. led in eighteen, the Soviets led in twelve, and three were too close to call.

Toward the end of the series, Walter Cronkite sought to blow away the entire specter of the Soviet build-up with one great pontification:

As for the military spending, the figures are also misleading. Our two systems, our two economies, are so different that to compare the cost of tanks and rocket

launchers is just about as meaningful as comparing the costs of a college education.

In truth, the military-spending figures are not misleading precisely because they do not naively "compare the costs of tanks and rocket launchers." The standard, nonclassified analyses of Soviet military spending which are published from time to time by the CIA and other government agencies give two sets of figures. One set attempts to gauge how much actual money or value, as a proportion of GNP, the Soviets are devoting to their military. The second set is not concerned with how much they actually spend, but rather with how much they are *buying*. This set is calculated by adding up all their tanks, rocket launchers, etc. (as best we can count them), and estimating what it would cost to buy these in dollars.

The first set of figures helps to learn about Soviet priorities, and is ordinarily calculated in rubles. The second set of figures tells how large their forces are or how fast their stockpiles are growing, as compared with our own. From that first set we have learned that the Soviets spend from 11 to 15 percent of their GNP on the military. The U.S. spends 5 percent. From the second set we have learned that their annual defense effort in recent years has been about 50 percent larger than ours. If this latter comparison is misleading in any way, it is in *understating* the Soviet advantage (because it is an aggregate figure — the Russians spend a much larger proportion of the total on hardware and a much smaller on amenities for personnel than we do).

In addition to denouncing the comparisons of Soviet and American defense spending as misleading, CBS took another step to make sure that viewers were not alarmed by them; it did not show them. At no point in the five-

hour documentary did CBS allow viewers to see or hear the figures Cronkite criticized.

If it ignored the Soviet build-up, CBS did not entirely ignore the Soviet Union. The fifth and final show was entitled, *The Russians*. It began with film clips counterposing President Reagan, making a speech about the Soviets, with President Brezhnev, making a speech (presumably) about the United States. Then entered Walter Cronkite, like a long-sufferent parent of quarrelsome children. He lamented "the voices coming out of the Kremlin and the White House today," with their "angry words about American warmongering and Soviet threats and dire intentions." This set the theme for the rest of the hour, filmed with Cronkite in Moscow, where he discovered that the Russians are people just like us. At one point viewers saw footage of U.S. Air Force "Red Flag" exercises, in which American airmen practice against other Americans imitating Russian tactics. Said Cronkite;

> The Air Force created the Red Flag exercise to train agains Soviet aggression. The Soviet Union sees Red Flag as proof of American aggression. They look at each other in the same mirror and each side sees what it wants to see.

How can this mirror-image symmetry be reconciled with the Soviet emphasis on military power and the glorification of military service which is altogether absent in the United States? Cronkite explained that the answer can be found in "World War II. The moral to the Russians . . . is simple: We must arm ourselves now to protect ourselves in the future." Cronkite did not explain why self-protection requires arming with overwhelmingly offensive weapons.

The "mirror" metaphor broke down entirely when CBS showed footage of the Soviet military parading through

Red Square before the assembled Soviet leadership. Cronkite remarked, "You can see in this film an awesome commitment to tanks and rocket launchers, or you can see a typical military parade that lasts about twenty minutes. Take your pick." There was little doubt about which view Cronkite took. But one wonders what CBS would think or say if President Reagan held a nationally televised military parade, complete with masses of tanks and missiles, in front of the White House.

Elsewhere in Moscow Cronkite interviewed a Soviet general, Mikhail Milshtein. General Milshtein said that today there is military "parity" between the Soviet Union and the United States, but that this is endangered by "some people in the United States" who "are trying to get . . . military superiority." Such superiority, said Milshtein, "is impossible" and "only leads to the arms race" which is "very dangerous." Milshtein also asserted that "nuclear war is impossible," but he was worried because in the United States there has been some "very dangerous . . . propaganda of the possibility of such a war."

Cronkite may or may not have believed all this, but he never challenged Milshtein or evinced the least bit of skepticism, despite the fact that almost everything Milshtein said contradicts published official Soviet military doctrine, which contends that the USSR must be prepared to fight and win a nuclear war.* Nor did Cronkite fully identify Milshtein to his viewers. He introduced him only as "a member of the GRU, Soviet military intelligence, and a leading officer in the Soviet army for almost forty years." But according to the CIA's non-classified directory of

*See Richard Pipes, "Why the Soviet Union Thinks It Could Fight & Win a Nuclear War," COMMENTARY, July 1977.

Soviet officialdom, Milshtein has been retired from active duty for more than a decade and is employed by the Soviet Institute of the USA and Canada, a fact which CBS knew. This Institute, according to Western inteligence sources, is partially run by the KGB and its job is to gather information about North America and to disseminate disinformation to it. CBS viewers were never told that the Soviet "general" whose peace-loving words they heard has the job not of helping to make Soviet military strategy but of helping to deceive the West about what that strategy is.

To conclude its show about *The Russians* CBS had Secretary of Defense Caspar Weinberger making the case for the Soviet Union as an expansionist power, and gave a fleeting glance at a map Weinberger was using to illustrate his point. Cronkite noted: "You can get yourself pretty frightened looking at all of the administration's maps and charts of Soviet aggression and military spending. But like so many of our perceptions of the Soviet Union, it tells you only half the story, the half the administration uses to press its case for higher and higher defense budgets." He added: "Since 1960, Soviet influence around the world actually has declined. Their socalled gains, like Afghanistan and Angola, take on a different perspective, particularly when they're measured against losses, like Egypt and China."

Although CBS did not allow viewers to examine Weinberger's map, it did give a close-up of two CBS lists of twelve nations each, one showing Soviet gains and one showing Soviet losses since 1960. In addition to the "so-called gains" of Angola and Afghanistan, CBS listed Cambodia, Congo, Cuba, Ethiopia, Laos, Libya, Mozambique, Syria, South Yemen, and Vietnam as countries where the Russians have gained influence since 1960. Soviet losses wer listed as Albania, Algeria, Bangladesh, China,

Egypt, Ghana, Guinea, Indonesia, Mali, Somalia, Sudan, and North Yemen.

Both lists are in substantial error, understating Russian gains and overstating losses. (The lists repeat most of the same errors of omission and commission that can be found in lists published by the Center for Defense Information.) Since 1960 the Soviet Union has increased its influence in Benin (which officially declared itself "Marxist-Leninist" in 1974), Nicaragua, Grenada, Chad, and Guyana. Bangledesh, inexplicably listed with Soviet losses, probably does not belong on either side of the ledger but certainly cannot be seen as an instance of Soviet loss since 1960. Similarly with North Yemen, whose twisted path since 1960 has most recently come to the point of an understanding with South Yemen, a firm Soviet ally, that the two nations merge at some future date. It may be difficult to see much Soviet gain in this, but it is even more difficult to see how it can be interpreted as a setback.

CBS listed Egypt as a "loss" of Soviet influence. This is accurate, although it should be noted that the Soviet Union never had a significant influence over internal Egyptian politics even in the days of its close military relationship (ended by Sadat in 1972). However, if Egypt is a Soviet loss then India should be listed as a Soviet gain. The Soviet Union is now India's major supplier of arms; in 1971 India signed a treaty of friendship and cooperation with the Russians; and India cooperates diplomatically with the Soviet Union and has urged accommodation to Russia's occupation of Afghanistan and Vietnam's occupation of Cambodia. (As in the case of Egypt, India's international diplomatic cooperation with Russia is not paralleled by a significant Communist influence in domestic politics.)

Cronkite closed the program by returning to his opening theme:

Who are these Russians? What are their intentions? No one can say with certainty. But if their perception of America is as flawed as we believe it is, then our perceptions of the Soviet Union could be flawed, too. In the absence of any real dialogue, the same old fears and doubts continue to dominate our relations.

The lesson: we have nothing to fear from the Russians but our own fear of them. This lesson certainly was not lost on the Washington *Post,* which ran an enthusiastic review under the headline: "The Soviet 'Threat.'"

If the Russians are people like us, if there is no Soviet threat, if there has been no Soviet build-up, then what motivates American defense planners? The answer, CBS implied, without ever quite saying, is a "Dr. Strangelove" complex. The subtitle of that 1960's movie, *How I Learned to Stop Worrying and Love the Bomb,* was echoed by CBS correspondent Bob Schieffer the first night on the air:

> More disturbing, perhaps, is the ease with which strategists talk about first strike. Limited nuclear war has made the horror of a nuclear exchange seem somehow manageable, even commonlace. That suggests we have finally learned to live with the bomb.

Strategists, needless to say, are people whose job it is to keep us safe from nuclear war by assuring our ability to deter it. If they talk about it with ease this is more likely to issue from familiarity than from indifference to the possibility of millions of deaths. What would CBS make of the fact that oncologists talk with ease about cancer? In any event, CBS apparently could not actually find a strategist who exhibited the requisite callousness; instead it

aired an interview with two young crew members at a missile site. Schieffer: "It must be an enormous responsibility . . . to be in charge, as you two gentlemen are, of the most powerful weapon . . . man has ever devised." One crewman: "Yes, sir, it is a definite challenge. It's more responsibility than I could obtain in a civilian world. And to me this is job satisfaction." What was the point of all this, if not to evoke echoes of Dr. Strangelove? The two young men are not in fact "in charge" of anything but certain technical chores.

The Dr. Strangelove image pervaded the series. A segment about tactical nuclear weapons began with Harry Reasoner showing a U.S. tactical medium-range missile, and observing, "Some say a device like this might start World War III." Some may say it, but the only one of note who does so is President Brezhnev in his campaign to keep NATO from matching the Soviet build-up of theater nuclear weapons in Europe. The idea that the United States would launch World War III is in itself both baseless and insulting; the idea that the U.S. would launch World War III by firing off its small, inaccurate tactical nuclear weaons is preposterous.

In discussing tactical nuclear weapons, Reasoner stated gratuitously: "With U.S. tactical weapons, radiation is what the army calls the "main killer mechanism.'" This sounds ghoulish—which may be why it was included-but CBS did not bother to explain that this "mechanism" renders the weapons not more lethal but more accurate, making it possible to avoid casualties to innocent civilians while firing at enemy forces.

In discussing the need for an airplane to replace America's aging B-52, Bob Schieffer observed: "It does not take long to discover every Air Force general's favorite force deficiency." Discussing arms procurement, Richard

Threlkeld said: "There is a constant plea from the Pentagon: we need more money because we don't have enough warplanes, enough of all sorts of weapons." And there was more in this vein, all illustrating the persistence with which CBS sought to project the image of a perverse, even dangerous, military mentality guiding our defense establishment.

In what direction is this mentality leading us now that we have a President willing to lend himself to its purposes? Dan Rather, summarizing three points on which he hoped the series would "stimulate debate," suggested the direction in which CBS believed we might be heading: toward self-fulfilling plans to fight a limited strategic nuclear war with the Russians; toward a European strategy which will require us to destroy Europe in order to save it; and toward exhausting our national treasure on useless and unnecessary new weapons. CBS devoted one evening to each of these three themes.

In the evening devoted to strategic nuclear weapons CBS sought to discredit concern with the Soviet Union's growing first-strike capability. Bob Schieffer stated that "when the President worries about a first strike, does that mean we are vulnerable now or that we have lost our nuclear clout? No, says the Navy's director of Strategic and Theater Nuclear Warfare, Admiral Powell Carter, not by a long shot." Admiral Carter was then shown stating that the United States could today absorb a Russian first strike and still retaliate.

Admiral Carter is correct, but he was answering a loaded question. The Russians are on the verge of becoming technbically able to destroy most of our ICBM's and many of our bombers and submarines in a first strike. That would still leave the United States with the ability to

retaliate with many submarine-based missiles, but this is a rather thin margin of safety which could disappear in the event of a technological breakthrough in anti-submarine warfare. Defense planners are seeking to close this so-called "window of vulnerability" as quickly as possible. At the same time, decisions being made in the Congress and executive branch in the next year or so will shape the U.S. nuclear arsenal for the late 1980's and 1990's.

CBS denigrated proposals to develop new strategic weapons on the grounds that today "if the Soviets did attack and destroy most of our land-based missiles and bombers, they would still have to take into account those 25 American subs loaded with 400 missiles carrying 3,000 nuclear warheads." Most of these warheads are carried on Poseidon missiles carried on our 31 Poseidon submarines. Each submarine carries 16 missiles, and each missile carries a MIRV tip with 10 warheads. In contrast, our older Polaris submarines, of which we still have 10 on duty carry missiles with shorter range, less accuracy, and only one warhead on each missile.

At the time the Poseidon submarines and missiles were being developed, the decision to build them wa strongly attacked by American doves. They argued, correctly, that the existing Polaris submarines and missiles were sufficient to deter the Soviet threat as it stood in the late 1960's and early 1970's; in essence, they made the same argument as Schieffer today. Yet if the governments of the 1960's and early 1970's had accepted this logic and refused to build the Poseidon submarine and missile, the United States would now stand exposed to Russian nuclear blackmail, just as it may in a few years if steps are not taken today to modernize our arsenal for the future.

In keeping with its belief that the two superpowers present mirror images of each other, CBS offered this account of U.S. and Soviet nuclear history:

> In the beginning of the nuclear age, we had overwhelming superiority, and we wanted to keep it at that. But the Russians don't trust us any more than we trust them, so these hydraheaded monsters have continued to multiply and the arms race continues—a race with no finish line.

It is simply not true, however, that the United States "wanted to keep it that way." Indeed, if we have been racing so hard one wonders how the technologically backward Russians have managed to overtake us in this vital field. The answer is that only the Russians have been racing, as Albert Wohlstetter has so convincingly demonstrated.*

Beginning in the Kennedy administration, the view took hold that the United States would be better off if it allowed the Soviets to catch up with us in strategic nuclear weapons. As then Secretary of Defense Robert McNamara told Stewart Alsop in 1962, the chances for keeping nuclear war limited would improve "when *both* sides have a sure second-strike capability." In keeping with this notion, the U.S. in the mid-60's leveled off the size of its nuclear arsenal and waited for the Russians to catch up and then do likewise. Instead, they surged ahead in a way that caught us by surprise and compelled U.S. officials to accept a numerical Soviet advantage in the 1972 SALT I agreement. As Kissinger said in Moscow at the time SALT I was concluded: "If you project the existing building programs of the Soviet Union into the future . . . you will get

---

*"Racing Forward or Ambling Back?" in *Defending America* (Basic Books, 1977).

a more correct clue to why we believe that [this] is a good agreement."

CBS ignored all of this history, which conflicts with its idea that the Americans and Russians are just like each other. Thus Cronkite posed the question: "What if the United States tried to wipe out the Soviet Union's land-based missiles in an American first strike?" The question was left unanswered, leaving the viewer with the impression that this is a genuine worry for Moscow. CBS might have told its viewers that for twenty years, encompassing the darkest years of the cold war, when U.S. nuclear superiority was so great that such a worry would have been far more plausible than it is today, no attack came, which suggests strongly that the United States is politically and culturally incapable of launching a surprise nuclear sttack.

But even if this inference were wrong, even if the United States were in the hands of the Dr. Strangeloves, the fact remains—again, a fact which CBS did not convey to its viewers—that the United States *does not have* the capacity to launch a successful first strike. Even the building of the MX missile would not give us that capacity. America's nuclear forces are equipped and structured to maximize their ability to survive a Russian first strike, not to launch an American first strike. Thus the emphasis on submarines and bombers, both of which are good for retaliation and useless for a first strike. Only accurate ICBM warheads are useful for a first strike, but the United States has not built enough of these to destroy Soviet retaliatory forces on the ground.

The exact reverse obtains for the Soviets, who have built enough ICBM's to destroy U.S. retaliatory forces on the ground. Now, it is true that ICBM's are not only the most threatening nuclear weapons, they are also the most

open to attack. CBS implied that by putting "almost all their strategic eggs in the missile silos," the Soviets have left themselves vulnerable. But CBS did not stop to ponder its own implications. Would the Soviets have done what they have done if they fear us as much as CBS suggests they do? If, as Cronkite would have it, the Soviet effort is motivated by an obsession with self-defense grounded in memories of World War II, logic would demand that they invest in secure retaliatory forces which can serve as a deterrent, not in the one kind of weapon which simultaneously threatens and invites a first strike.

In another segment CBS turned its attention to the problems of tactical nuclear warfare in Europe. The message of this program was that the use of such weapons by NATO would have the effect of "destroying Europe in order to save it." The basic scenario was set by Harry Reasoner, who said:

> The specter of Soviet tanks rolling through Western Europe has haunted the West for thirty years. The Army insists it must be able to stop such an attack with battlefield nuclear weapons.

The problem with this, explained Reasoner, is that "they don't have to miss by much to hit a civilian target. . . . If you look at a map of Europe, the way things are crowded together, doesn't that make fighting a nuclear war almost impossible?"

The problem which CBS devoted the entire hour to examining is precisely the one which neutron weapons were proposed to remedy. They would be small and precise enough—so it is hoped—to be able to thwart an advancing Warsaw Pact tank column withou destroying the neighboring village or killing civilian inhabitants. Yet at no time during the program did CBS mention the Carter

administration's efforts to deploy neutron weapons in Europe.

More importantly, it is just not true that "the Army insists" it must use tactical nuclear weapons. Rather, it insists either that its conventional forces be strengthened to the point where they could defend against what is today the superior conventional might of the Warsaw Pact, or else that tactical nuclear weapons be used as an "equalizer" to compensate for our weakness in conventional forces. Given the choice, the Army would almost surely prefer the conventional option, as indeed it should. Now that the Warsaw Pact has developed immense theater nuclear forces, it makes no military sense for NATO to initiate theater nuclear war in order to blunt a conventional Warsaw Pact attack.

But all of these considerations were lost on CBS. After spending one whole program debunking NATO's theater nuclear weapons, in the next program CBS ridiculed efforts to strengthen NATO's conventional capabilities. Correspondent Ed Bradley:

> In Europe, the line between East and West hasn't moved in twenty-six years and we could find no one who thought the Warsaw Pact would invade. Even so, the Reagan administration wants to pour enough money into NATO to fight a long-term conventional war—a scenario that most strategists we talked to considered the least likely.

Of course, the reason strategists consider a longterm conventional war in Europe to be an unlikely scenario is that, in the absence of force improvements, NATO could not stave off a Soviet attack for very long.

Perhaps the very heart of the whole series was the program about U.S. weapons procurement, titled *The War Machine.* The point of this program was stated at the outset by Dan Rather: "Never before in our history have so many of our weapons been behind schedule, over budget, out of order." How did CBS calculate this startling statistic? When asked, CBS press spokesman Peter Goodman said he did not know. Executive Producer Howard Stringer also did not know. Producer Craig Leake failed to respond to a telephone inquiry.

It was in this program that CBS delivered its basic message. "Do our weapons really make us strong?" asked Richard Threlkeld. Then he answered himself: "That depends on how you define national security." The "conventional wisdom" is that they do, but "a growing number of economists argue just the opposite." Defense spending, they say, will destroy the economy. Threlkeld left little doubt about which side CBS believed was right, though he was constrained from saying so plainly. Instead, he offered this "middle-ground" conclusion: if we do increase defense spending, "it's sacrifice that will require perfect faith that our government is spending that money wisely on weapons we really need for the sake of national security."

This seems rather an exacting standard. Indeed, one might wonder whether it is conceivable in a democratic system that the public will have "perfect faith" in *any* major government program. But measured against this standard, the U.S. weapons-procurement process, as portrayed by CBS, is pure slapstik comedy.

This process, said CBS in the language it borrowed from the book of that name, is dominated by the "Iron Triangle"—defense officials, contractors, and Congressmen. "The Iron Triangle," Richard Threlkeld

asserted, "is obsessed with procurement—getting exactly the new hardware it wants and as much of it as it can." It "is not only a closed world, it's incestuous to a degree." Presumably the military brass are obsessed with more weapons because it is their nature to be so obsessed. As for the contractors, they are after profit. And the Congressmen "like to take new weapons contracts home to their districts."

The Iron Triangle is an updated versin of the "military-industrial complex," and CBS showed a film clip of President Eisenhower's farewell address in which he coined that term. Yet an examination of Eisenhower's speech shows that in it he was not warning about the problems of weapons procurement but about the dangers to the survival of liberty that he saw in an amalgam of public and private power. In the same breath Eisenhower warned that federal support for scientific research was creating a similar menace in the form of a "scientific-technological elite." CBS also did not think to broadcast the description of Communism which Eisenhower offered in that speech: "A hostile ideology—global in scope, atheistic in character, ruthless in purpose, and insidious in method."

The military-industrial complex was a favorite villain of the 1960's, but as an analytic construct it had a fatal flaw: it ignored the fact that every weapon bought must be authorized by Congress. To make the construct sound more plausible, it has been expanded to include Congress; hence, the Iron Triangle. But the veneer of plausibility is superficial. Richard Threlkeld, speaking from Capitol Hill, made this assertion:

The men in uniform come over here from the Pentagon to ask for more money for their weapons. They know Congressmen and Senators like to take new weapon contracts home to their districts, so it's all very polite. You don't hear many hard questions.

In truth, during the 1960's and 1970's, Congress not only asked hard questions, it also slashed away at military spending. Every year the Senate and House Armed Services Committees and the Defense Appropriations Subcommittees went over the defense budget item by item. Prior to the Carter years, the Armed Services Committees cut Pentagon budget requests year after year. In 1976, the Senate committee cut the request for funds for the MX by 39 percent and completely deleted a Navy request for a nuclear-powered strike cruiser, while the House committee cut the Navy cruise-missile program by 40 percent. In 1975 the House committee cut funds for AWACS (Airborne Warning and Control System) aircraft by 50 percent and demanded certification from the Secretary of Defense himself that the AWACS had passed certain additional tests before even the money that remained could be spent. The Senate committee that year also voted to delay work on the B-1 bomber, a step which helped make possible the eventual cancellation of the bomber by President Carter. In 1974 the House committee halved the request for AWACS and cut advanced-ballistic-missile defense research by nearly 30 percent, while the Senate committee cut Navy shipbuilding funds by nearly 20 percent. At the same time, the Senate committee's report scolded the Pentagon, saying that "the committee must again stress, as it has in the past three yeas, its concern that the escalating cost of weapons systems and manpower is keeping the defense budget at a constantly high level." In 1973 the Senate cut the Navy's F-14 aircraft requests by 73 percent and the Air Force's B-1 by 22 percent, while the House voted major cuts in funding for the F-15 aircraft, ship construction, and the anti-ballistic missile. The House committee also held hearings to investigate cost overruns in weapons.

One could go on, but the point is this: the foregoing is a sample of what the *hawks* on Capitol Hill did. The two Armed Services Committees were chaired during those years by Senator John Stennis and Representative Edward F. Hebert. In each of these years the dovish minority on the two committees – which included Representatives Les Aspin, Patricia Schroeder, and Michael Harrington, and Senators Stuart Symington and John Culver – pushed dozens of additional budget cuts which were not adopted in committee. Every year they filed dissenting views; often they carried these fights to the floor of the House or Senate where sometimes they won.

Thus, CBS's claim of a "closed society," and an "Iron Triangle" where "you don't hear many hard questions," is blatantly false about the last decade. Is it true of today, with Reagan in the White House and the hawks in their glory? For several years the Pentagon has been drawing up plans for a major new project called the NAVSTAR Global Positioning System. This project would put 18 navigation satellites into space, build a huge ground-control station, and procure a host of user equipment for the military services. The total project would cost around $8 billion with thousands of contractors in nearly every state in the nation receiving a part of the action and every military service getting to use the new equipment. NAVSTAR is the perfect project for CBS's Iron Triangle. However, in acting earlier this year on the FY 1982 defense budget, the House Armed Services Committee said "the NAVSTAR Global Positioning System is more of a 'nice to have' than an 'essential' military support system" and cancelled the entire project, all $8 billion worth.

Nor was the NAVSTAR cancellation unique. The Army requested funds to develop a new generation of anti-tank rockets called the Infantry Man Portable Anti-Armor

Weapons System. The House committee said it "does not believe the Army can afford to proceed with the $500 million IMAAWS program and recommends that the program be terminated." The Air Force wanted funds to start a new generation of jet fighters. The House committee, citing the potential for improvements in the existing F-15's and F-16's, said "it has not been demonstrated that the development of a prototype aircraft is necessary at this time or even affordable in view of other Air Force requirements"; the committee then denied the request for funds. The Air Force also asked for $60 million to continue development of the Low Altitude Airfield Attack Weapon, a project with potential procurement costs in the hundreds of millions of dollars. The House committee said it was "concerned about the very significant cost growth that has occurred in the program. Accordingly the committee recommends that the . . . program not be reinitiated and denies the Air Force request." The Navy requestd $121 million to design a new class of ships, called the DDG-X ship. No doubt the shipyards of the Iron Triangle were eagerly awaiting the billions that would be spent building these vessels, but the House committee called the plans for the ship, a new destroyer type, "not capable of meeting the threat" and cancelled the entire project.

In all, the House Armed Services Committee cancelled (not just reduced) all funding for 31 separate weapons projects whose collective potential procurement costs were in the many tens of billions of dollars.

Threlkeld's assertion that "you don't hear many hard questions" about weapons on Capitol Hill, that "a new weapons system is rarely cancelled," and that "the procurement system gives every weapon a life of its own, regardless of what's happening out in the field" is so contrary to the truth that it might seem just a mistake on

CBS's part. Yet this falsehood is essential to the entire structure of CBS's argument that U.S. weapons procurement is divorced from any sober assessment of genuine defense needs.

Pursing this theme, CBS said that Congressman Thomas P. O'Neill and Senator Edward M. Kennedy support the Navy's F-18 fighter because parts of it are built in Massachusetts. Then Threlkeld added: "Others, too, said they liked the plane, which is not unusual when you consider that parts from the F-18 come from 20,000 companies scattered among 44 states." Congressmen do of course often favor federal projects in their districts, but if a project is divided among 44 states the effect is likely to be the opposite of what CBS implied: rather than giving everybody a vested interest, diffusion gives almost nobody a strong interest. Moreover, CBS was wrong in a larger sense: defense dollars are spent in every state and congressional district, but despite the ominipresent vested interest thus created, Congress cut proposed spending every year from FY 1968 until FY 1979 for a total cut of approximately $42 billion.

The example on which CBS erected its caricature of the procurement process was the F-18, an aircraft about which the show reached a harsh judgment. In the course of the series the F-18 was called "a crippled plane," "a flying frying pan," and "a turkey." And CBS stated that its aim was to prevent "whatever comes after the F-18 [from being] more of the same." Although some responsible defense analysts have questioned the wisdom of the F-18 on grounds of cost or technology, there were several things wrong with CBS's treatment of the topic.

First, the final answer is not yet in on the F-18 and will not be for several years. The plane is just out of develop-

ment and entering production. As with most new weapons systems, it is experiencing teething problems. CBS was certain that the problems could not be solved. But the Navy, the Armed Services Committees of Congress, and most defense analysts believe that the problems are only the normal ones of a new jet fighter. CBS is safe from any immediate refutation because it will be several years before anyone can know for certain. The network would have been on surer ground had it picked one of the thousands of weapons systems that have passed through the entire cycle of design, development, and procurement over the last thirty years so that the success or failure of the weapon could be objectively evaluated. If it had unearthed a weapon as disgraceful as it claimed the F-18 to be, CBS would have come up with a major scandal. In fact it is rare for the weapons-procurement system to produce "a turkey." Those projects that develop serious problems are usually dropped before they reach the point of mass procurement.

Second, CBS said that "in all the years the Iron Triangle was preoccupied with the how of the F-18," nobody asked "why our weapons cost so much." In fact, in the FY 1977 defense bill the House Armed Services Committee cut F-18 funding by 15 percent, explaining in its report that it was "not convinced that the Navy is developing this plane at the lowest possible cost." Just this year, in a supplemental appropriations bill, the Senate Appproriations Committee denied a Navy request for an additional $95 million for the F-18 with the comment that before more funds are authorized "the few remaining technical problems should be resolved."

Third, CBS implied that much money could be saved by adopting the strategy sponsored by Senator Gary Hart of building smaller aircraft carriers equipped with Harrier

vertical take-off planes rather than more large carriers equipped with F-18's. But Hart's proposal is to build a great many more small carriers, than we would build large carriers. As he explained last year: "Significantly larger numbers of aircraft carriers" are "vital for effective support of diplomacy. The increasing problems facing us in the Third World suggest we . . . need a sizable force of light carriers." Carriers, in addition, are expensive aircraft. Whatever the merits of Hart's proposal, he has not argued that the purpose of his plan is to save money: his concern is strategy, not budgets.

Incidentially, the use of the Harrier as a foil for the F-18 illustrates the unfairness of judging a weapons system by its initial shakedown problems. A few years ago the Harrier was where the F-18 is today, at the stage of moving from prototype to production aircraft. In the first years of its use by the U.S. Marines, a number of Harriers crashed. Defense critics pounced on the crashes as proof that once again the Pentagon had wasted billions on a piece of junk. However, the Harrier's early problems were rectified, and today it is a highly regarded aircraft.

Fourth, CBS did not mention that the Canadian armed forces and the Canadian government have compared the F-18 with the F-16 and several competing European jets. After a series of tests, the Canadians decided to buy the F-18 as their first-line fighter for the 1980's. The F-18 is also a serious candidate for purchase by the air forces of Australia and Spain.

Fifth, CBS implied that the F-18 proves that high technology in weapons is intrinsically a mistake. Threlkeld: "High technology is not much help when things start getting confused. . . . Combat is always confused." This was proved, said CBS, by Air Force exercises in which less sophisticated F-5 fighters fared well in dog-fights against

Navy F-14's and Air Force F-15's. But CBS did not tell its viewers that the exercises were designed to train pilots, not to test aircraft. Consequently, one of the ground rules forbade engagements before eye contact was achieved. In actual combat one of the principal advantages of the F-14 and F-15 is their ability, lacking in the F-5, to shoot down enemy aircraft using long-range guided missiles before the enemy aircraft come into visual range.

CBS extrapolated from the F-18 to all other high-technology weaponry. Said Threlkeld: "It won't be the first of our weapons trapped by its own technology. There are lots of others." But of these "lots" CBS could name only two, and primarily the XM-1 tank. CBS criticized the XM-1 as "so heavy, so complex, it gets only three gallons to the mile." "It can't go nearly as far as our old tanks," the show asserted. Threlkeld used the XM-1 to justify his statement that "Every major American weapons system today is the product of the same thinking: build a few complex weapons, instead of a lot of simpler ones."

In the XM-1 tank, as in the F-18, CBS picked a system in its teething stage where a negative judgment could not be refuted conclusively. The only good thing that CBS could find to say about the XM-1 was that it is fast, an advantage supposedly outweighed by its fuel consumption, its cost, and its mechanical unreliability. CBS did not mention the tank's "special armor" which will defeat many current Russian anti-tank rockets, its astounding shock-absorber system that allows it to achieve unparalleled accuracy when firing on the move, or its elaborate features to protect the crew from blast and fire.

Even the CBS treatment of the XM-1's fuel consumption was biased. The XM-1 uses more fuel than existing American tanks becuase it has a new turbine engine. The Army chose the new turbine over the standard diesel, even

though it uses more fuel, for several reasons. First, diesels are notoriously difficult to start in cold weather, whereas the turbine has no problems, an obvious advantage for a tank that is designed for use in a European winter. Second, existing tank diesels are extremely loud, and usually a tank is heard approaching long before it is sighted visually; the X-1's turbine is so quiet that the tank's treads make more noise than the engine. Finally, where existing tanks can often be spottted as they move from a standstill because a diesel engine normally emits a telltale smoke plume, the XX-1's turbine does not put out a smoke plume when accelerating. Ignoring the advantages of the XM-1 engine, CBS simply dismissed it as a gas guzzler.

CBS suggested that Congress, as part of the Iron Triangle, is hopelessly devoted to high technology. Actually, Congress was nervous about the Army's decision to adopt a turbine engine for the XM-1. At the insistence of Congress, the Army developed an alternative diesel engine in case the turbine engine failed to live up to hopes. Although experiencing normal shakedown problems, the turbine has proved itself, and Congress has ended funding for the alternative diesel engine.

While CBS criticized extreme technological sophistication in U.S. weapons, it also played the other side of the fence. In its third segment, entitled *Call to Arms,* CBS touted American technological superiority in order to downplay the Russian threat. After noting the Russian numerical superiority over NATO in tanks (38,000 versus 17,000), in attack helicopters (two to one), in men under arms (400,000 more), and in combat aircraft (200 to 700 more), Ed Bradley minimized the significance of the figures by stating: "But before you put up a white flag, remember that wars aren't won by fire power alone, and you don't measure tank against tank, but tank against

tank killer. Then there's technology. In most areas, we're supposed to have the edge." This statement was inconsistent with the CBS attack on high technology in its segment on weapons procurement. But the two themes were consistent with CBS's overall stress: the U.S. should not spend more money on defense.

A viewer who sat through all five evenings of *The Defense of the United States* would have learned that the United States is not threatened by any external enemy, but rather by the tragic propensity of the two superpowers each to see in the other a mirror reflection of its own fears and hostilities. Guided by these misplaced fears, by the insensibilities of the military mentality, and by the venalities of Congressmen and contractors, the United States is about to spend itself into bankruptcy on weapons which, had we to use them in a real war, would not work, except to kill Western European civilians. Worst of all, our Dr. Strangeloves are pursuing the self-fulfilling idea that nuclear war is indeed possible and are on the way to incinerating us all.

This caricature of U.S. defense policy is a familiar one. It had great currency a decade ago, before it was rejected by most Americans in favor of a more realistic view. Perhaps one reason for its rejection is that it does not stand up to scrutiny, as should be clear from the large number of factual errors, distortions, and misrepresentations to which CBS had to resort in order to bolster its case.

CBS is entitled to its opinions. *The Defense of the United Staes,* however, was not presented as an editorial but as a news documentary. As the largest information outlet in the Western world, CBS has a responsibility to impartiality and objectivity which it has seriously failed to

meet. For the record (and for the Federal Communications Commission), the network will continue to say that its series presented all sides, but the people at CBS gave every indication that they knew otherwise. They felt that "the opposition wasn't doing its job," so they staged their own guerrilla attack against the emerging consensus in favor of rearming America.

THE ONE-AND-A-HALF-TRILLION DOLLAR MISUNDERSTANDING

Pundits Like Dan Rather, Richard Threlkeld, and James Fallows Have Discovered the Issue of the '80s: National Defense. Unfortunately, They Often Don't Know What They're Talking About.

By Benjamin F. Schemmer

National defense has become the hot topic in American journalism. As Ronald Reagan begins to "rearm America," our TV sets, newspaper op-ed pages, and magazines warn us that the trillion and a half dollars he plans to spend over the next five years won't buy much more security – because the Pentagon inevitably will screw things up.

A trillion and a half dollars is a lot of money, and it makes good copy at a time when the public wonders if new tanks will come only at the expense of Social security and welfare checks; it makes even better copy when the tanks and planes and submarines don't quite work as advertised and cost from a million to a billion dollars each.

Unfortunately, many of the media pundits bringing you all this insight into defense don't know their ass from their elbow. Take Dan Rather's hype on the *CBS Evening News* on June 17 boosting Richard Threlkeld's "complete investigation" of the military-industrial complex that was aired later that night. Rather showed a dramatic clip of the Air Force's F-16 fighter with this voice-over: "The planes used by the Israelis to bomb Iraq were US F-16s, developed by

---

Benjamin F. Schemmer is editor of *Armed Forces Journal International*, a 118-year-old independent monthly magazine that covers defense issues. Representative Otis Pike has said of the magazine: "Highly respected and objective, it is not simply an apologist for the Pentagon. It praises them when it thinks they are right, and raps them when it thinks they are wrong."

General Dynamics. They are widely acknowledged to be the world's best fighter-bombers; they are also the most expensive [and] technologically sophisticated, requiring massive maintenance."

Airmen the world over must be wondering whom CBS polled to conclude that the F-16 is the "world's best fighter-bomber." Pilots debate such issues endlessly, and even General Dynamics has never made such a claim for the F-16 — as good as it is.

While that description of the F-16 is debatable, CBS's flat statement that it is also the world's "most expensive" fighter-bomber is not: CBS is just plain wrong. In fact, the F-16 may be the world's *cheapest* fighter-bomber. An F-16 bought in this year's defense budget costs about $14 million in "fly-away prices" (without spare parts or amortized research-and-development costs); an Air Force F-15 costs about $28 million; the Navy's F/A-18 costs about $34 million; the British-German Tornado about $23 million.

As for the F-16's "massive maintenance" . . . the plane had the third-lowest maintenance man-hours per flight hour of all eight USAF first-line fighters or bombers last year. And that was its first year of operational use. Its design goal is 25 maintenance man-hours per flight hour — once the plane and its spare-parts pipeline are mature. In its first year of operational use, the F-16 beat that goal by 17 percent.

So why did CBS use the term "massive maintenance"? Was it to back up Rather's contention, when he introduced Threlkeld's "complete investigation," that what is disturbing" about the "one-point-three trillion dollars" we will spend to defend ourselves in the next five years "besides the cost, is that many of the weapons we're already building don't work as well as they're supposed to"?

Later in the broadcast, Threlkeld cited results of the Air Force/Navy ACEVAL tests at Nellis Air Force Base, Nevada, six years ago to argue that "high technology is not much help" in the air-to-air combat arena, suggesting that we should be aiming for "quantity over quality." He called ACEVAL "the most realistic dogfight in American history."

That was not the conclusion of the pilots flying those tests. The final chart of their briefing said simply, "ACEVAL Bottom Line: the tests did not achieve the objective of quantifying the influence of numbers versus performance on the outcome of our engagements." In fact, the pilots objected strenuously that the dogfights were limited to day-only visual flight rules, thus negating the impact of all-weather radar and weaponry which the technologically sophisticated F-15, F-14, and F-18 carry.

The pilots objected also because, in the tests, they were not allowed to engage their opponents until the enemy had been visually identified — a rule of engagement that Robert McNamara and Lyndon Johnson imposed on US aircrews flying over North Vietnam, and one reason the US spent three years, $22 billion, and 3,091 lives after the Paris peace talks began to bring 566 American prisoners of war home from the dungeons of Hanoi.

The visual-identification requirement further nullified any advantage of the technology that differentiates planes like the F-15 and F-16 from ones like the F-5 and Mirage 2000: Their radars were blinded and their long-range missiles rendered inert by the rules under which the planes were tested against "small, simple, and cheap" ones like the F-5.

Finally, Threlkeld failed or forgot to note, the Nellis tests were flown directly over the runways from which the

planes took off — so the extra range built into America's "sophisticated" fighter-bombers counted for naught.

"The most realistic dogfight in American history"? I doubt that CBS could produce one pilot who flew those tests who would do much more than laugh at the statement. The most common way pilots describe ACEVAL is that it was like trying to evalute a pistol against a rifle by firing them in a jail cell.

CBS's widely touted five-part study of national security rates a B+ for theater, a D for journalism, and an F for accuracy. Toward the close of Threlkeld's "investigation" into horror stories about the way the Pentagon buys weapons, he told us: "But we couldn't find a single instance of the Pentagon ever recommending canceling one of its programs."

Who does CBS use as "investigators"? Doesn't the network run even a superficial check of its "facts"? One phone call from Threlkeld or his writers would have produced a list of scores of major programs the Pentagon has canceled in recent years — on its own, not just because of congressional or White House objections. Here are a few: the Army's Cheyenne helicopter, its Infantry Manportable Anti-Tank Assault Weapons System (right after contracts to develop it were awarded last fall), and its Roland air defense missile (a decision Harold Brown made last fall, which was later reversed by Caspar Weinberger); the Navy's F-111B and its Captor mine (another Brown decision reversed by Weinberger); the Marine Corps' AV-8B jump jet (a Brown decision that Congress overruled three years running); and the Air Force's B-1 (Brown recommended that Carter kill it in favor of air-launched cruise missiles), Medium Range Mobile Ballistic Missile, Manned Orbiting Laboratory, KC-10 cargo tankers (a Brown decision overruled by Weinberger), and A-10 close-support

planes (a Brown decision overruled by Congress and later by Weinberger).

CBS, in fact, could have done an entire program on the money the Pentagon has spent developing weapons that it later decided to cancel outright or quit buying far earlier than expected. That subject *would* have been worthy of comment: One reason defense costs so much is that under tight defense budgets there has been little constancy of purpose in the way we buy things. Even when weapons work as advertised (the F-16, Ronald, KC-10, and the AV-8B are but a few examples), we buy so few of them or abort the projects so prematurely that the individual cost of what few weapons do reach the field soars higher than the apogee of some satellites.

But CBS's special series on defense *was* unprecedented: Never has a network invested so much prime time to ruin its own reputation. It was ironic that CBS set its new standard for defense reporting right after naming former Defense Secretary Harold Brown to its board of directors.

But CBS has no monopoly on bum dope. Some of the worst stuff is coming from people who know better, but are just as loose as CBS with their "facts." Former CIA director Stansfield Turner, for instance, wrote recently on "Why We Shouldn't Build the M-X" in the *New York Times Magazine*. It was a provocative, thoughtful piece, well written — and punctuated with gross errors.

For example, Turner said that building basis for the M-X missile system would "require, according to some estimates, 40 percent of the country's total cement production for three years." He must have gotten his numbers from the same sources who persuaded him in mid-1978 that the Shah of Iran would remain in power for another

decade. Turner was off by a factor of *80*. The largest number I can track down that anyone has ever estimated for M-X cement needs is about one half of one percent of US production. Turner is writing a book, the *Times* told us, on "military strategy." It ought to be hilarious.

But the subject is not funny.

President Jimmy Carter's chief speechwriter James Fallows, has just come out with a best-selling book called *National Defense* (Random House). Like so much of the reporting now getting into print on national-security matters, the Fallows book fails to heed an admonition Joseph Califano cites in his book, *Governing America*. In order to understand American politics, Califano writes, "Try to tell the difference between tides, waves, and ripples." Most of Fallows's book is about ripples. His horror stories of how the Pentagon screwed up its last five or six two-car funerals (the M-16 rifle, F-16 fighter, and so on) are fascinating, engagingly written — but not new.

It's the tides and waves that should concern America: How can we get our allies to contribute a proportionate share of their national treasuries to their own defense in Europe? If Japan refuses to increase its defense spending above nine-tenths of one percent of its gross national product (while we spend nearly five percent of ours helping guarantee Japan's oil lifeline), would Japan consider an alternative? Like investing four percent of its GNP in finding a way to gasify or liquify coal economically? If the US really wants to sell China arms, why not ask China for a friendly quid pro quo: recognize South Korea, a move that would allow us to redeploy some of our forces there to locations where they can better protect Persian Gulf oil supplies?

Those are the sorts of national-defense issues that a former presidential speechwriter should be addressing.

Those are the sorts of strategic initiatives that could ease our defense burden by many billions of dollars. Fallows doesn't touch them; instead, he assaults us with trivia – for which his publisher wants us to pay six cents a page.

Fallows' indictment of the ripples that the Pentagon's way of doing business has caused in our national defense would ring truer if he had given equal time to the tidal waves that micro-management by the White House and Congress cause in national-security affairs. A President *should* be concerned about multi-billion-dollar issues like M-X versus Trident sub, or B-1 versus cruise missile, issues where survival is at stake. But Fallows doesn't tell us of the years his boss, Jimmy Carter, spent micro-managing a $6.5 million defense issue into a $40 million international flag – all over a little commercial air terminal in Iceland. Accounts vary somewhat even among those who were directly involved in the fiasco, but they add up to this:

Soon after Carter took office and asked NATO's fifteen nations to contribute more to their common defense, Carter turned down a $6.5 million Pentagon request to build a civil air terminal at Keflavik, Iceland – so that nation's civil air carrier, Icelandic Airways, wouldn't have to process its passengers through the small and slightly dingy US Navy terminal there.

Carter scoffed at arguments that the Icelanders have a deep-rooted disinclination toward things military, couldn't afford the air terminal out of their meager $600 million annual government budget, represented one of NATO's most critical allies, and has not asked for US aid in a long, long time.

After the rejection, Defense Secretary Harold Brown

waited almost a year and then appealed to Carter to let the civil air terminal go ahead; its cost, he reported painfully, would now be $11.5 million: The Icelanders had a better design now, or something. Carter turned the appeal down. Brown's NATO advisers were aghast, but finally persuaded Brown to go back to the President once again: By this time, the terminal's cost was up to $23 million. Carter reacted quickly: "No!" During Carter's last months in office, Brown submitted the proposal a fourth time; the cost had grown to almost $40 million. To the Pentagon's surprise, Carter approved it with a handscrawled "OK," signed, "JC." But he told one of his military assistants: "Make sure Harold understands that I'm *still* against this. The only reason I'm approving it is that he's never argued with me four times on the same issue before, so I guess it must be important to him."

That's a strange way to decide important national-security issues. Writing so pejoratively about the way the Pentagon handles such matters, Fallows might have shared with his readers some insight on what happened when those decisions reached the desk of the President he served.

Like CBS, Fallows spends a lot of time indicting the F-16 for its sophistication and complexity, along with its "high cost" Air Force counterpart, the F-15, and its sister fighters in the Navy, the F-14 and F-18. For much of this insight, Fallows relies on a Pentagon document prepared by a Defense Department analyst named Franklin C. Spinney and formaly titled "Defense Facts of Life" — a 56-page single-spaced tome, with 87 briefing charts attached, whose thesis is summarized:

"Our strategy of pursuing ever-increasing technical

complexity and sophistication has made high-technology solutions and combat readiness mutually exclusive."

Spinney has been giving his briefing throughout the Pentagon for years to anyone who will listen. He gave it a few weeks ago to General Wilbur Creech, the four-star officer who heads the US Air Force Tactical Air Command. Creech told Spinney that the four-hour briefing was fascinating and contained lots of useful data. But, Creech said, he wasn't quite sure how it related to his real-world problem of trying to field a fighter-bomber force that could cope with a Soviet air threat that outnumbers NATO by 2,850 combat planes to 1,500. Spinney didn't know either. He told Creech, in effect: "That's your problem, General."

Creech makes this analogy: Spinney supporters are like cost analysts looking at the Oakland Raiders football team. They tell the owner: "What you should do is get rid of the quarterback and the wide receivers and buy more guards." The owner answers: "But I can't win in this league with more guards." And the cost analysts tell him: "Don't bother me with those kinds of details; you ought to get rid of the quarterback and your wide receivers — they cost too much and break too often."

Fallows would have the US design its fighter forces around Spinney's prescription: simple, cheap, non-radar-carrying planes like the Korean War F-86, planes the US could buy in vast quantities and fly often because they are simple to maintain and turn around quickly for more combat flights than "hangar queens" like the F-15.

Spinney and Fallows ought to read a little more history. The F-86 had an accident rate that ranged from 8 to 26 times higher than of today's F-15: In its first seven years of use, the Air Force lost 1,972 F-86s just in accidents! (The

"complex" F-15 has the lowest accident rate of any figther ever produced, and the "sophisticated" F-16 has the lowest accident rate of any single-engine fighter ever produced.) In one single year, 1954, the Air Force lost 487 F-86s — one and a half a day — because pilots couldn't bring the simple little mother down to a safe landing. That year the F-86 had an accident rate of 61 planes lost for every 100,000 hours flown; the F-15 averages 5.

What Spinney and Fallows — and analysts they both quote widely, like former Pentagon whiz kid Pierre Sprey,

---

Fallows is ubiquitous. A big interview in *People* magazine and excerpts in the *Atlantic Monthly* and the *Washington Monthly* have helped turn his modest work into the Holy Writ.

---

now a consultant — really want is for the Air Force to go back to the propeller-driven P-47 Thunderbolts and P-51 Mustangs of World War II. A fascinating thesis: Simple is good, more simple is better.

But the facts in the case are these: Each F-15 averages two to three sorties (missions) per day in realistic wartime "surge" exercises in Germany, in weather that grounds $45 million civil airliners. The highest World War II sortie rate that the P-51 and P-47 ever attained was less than one mission per plane per day. During the Battle of the Bulge, when Omar Bradley and George Patton prayed for all the air support they could get, the planes averaged only half a sortie a day.

Like slime mold, the impressions created by all this new defense reporting will stick around for a long time. Born of the same kind of fictional alchemy that created the

monster Frankenstein, Turner's cement estimate, for instance, is already taking on a life of its own. A June 22 article in *New York* magazine titled "$1.5 Trillion for Defense?" reads like a seven-page summary of Fallows's book, with a few new "facts." One of them reads in full, "Construction of the MX complex would tie up 40 percent of the nation's concrete capacity for three years." What the hell: If Stansfield Turner said so, it must be true. *New York* didn't credit Turner with the cement estimate, so investigative reporters looking into the Pentagon's corner on the cement market now have two sources to cite.

The *New York* article, like a *Texas Monthly* June feature on the F-16 ("The Plan the Pentagon Couldn't Stop"), reads straight Fallows. It's very attractively laid out. A big sell line across one two-page spread tells you, "The top military brass likes sophisticated weapons, but technology has become the new Maginot Line. . . ." Michael Kramer wrote the *New York* piece; Michael Ennis, the one in *Texas Monthly*. But their articles read as if Fallows had cloned himself.

Fallows is ubiquitous: A big interview in a recent issue of *People* magazine ("Is the Reagan defense boom a bust? It's flying too high on technology, warns Jim Fallows"); excerpts in the *Boston Globe*, the *Atlantic Monthly* (where he is Washington editor) and the *Washington Monthly* (where he is contributing editor); and prominent reviews in magazines and newspapers all over the country — all have helped turn his modest work into the Holy Writ. Fallows, CBS, and Stansfield Turner would have you believe that war now boils down to an issue of quantity versus quality, and that to win we need only to buy more simple weapons.

They don't tell you how we will pay all the extra pilots needed to fly all those simple planes, or where we will find airfields in Europe to park them.

They don't tell you that the F-15's "complicated" F-100 engine used to have major reliability and maintenance problems, but that these have been reduced almost by a factor of 10 in the past two years. They tell you that on an average day in 1978, 44 percent of the F-15s were not fully ready for combat. They don't tell you that today F-15s are fully mission-capable over 64 percent of the time; that only one Air Force plane now has a higher combat-readiness rate; and that the F-15 is now ready for combat more often than the F-4, which it replaced.

They don't tell you that one reason Navy officers prefer to hunt Soviet submarines with the costly DD-963 destroyer is that the much simpler FFG-7 frigate can't carry a sonar big enough to do more than locate schools of fish.

They don't tell you that nuclear ballistic-missile submarines cost a lot because, for one thing, they're built to last. The 41 subs have made more than 2,000 combat patrols, totaling more than 100,000 days under water since 1960.

Fallows, CBS, and Turner give you a simplistic view of an enormously complicated problem in a world that is uncertain, uneasy, and unpredictable.

You deserve to be better informed on trillion-and-a-half-dollar issues like national defense. □

American Security Council
Complaint Against CBS for
Violation of the Fairness Doctrime

Exhibit No. 3

TRANSCRIPTS OF
CBS FIVE PART SERIES
THE DEFENSE OF THE UNITED STATS

(OMITTED)

American Security Council
Complaint Against CBS for
Violation of the Fairness Doctrine

Exhibit No. 4

AFFIDAVIT OF MR. JOHN M. FISHER, PRESIDENT OF THE AMERICAN SECURITY COUNCIL

AFFIDAVIT

I, John M. Fisher, being duly sworn, do hereby depose and say the following:

That I am President of the American Security Concil, a non-profit organization devoted to increased understanding and knowledge of issues affecting the national defense and security of the United States; and

That in my role as President of the American Security Council and also as a concerned citizen of the United States, I am, and have been in excess of the past five years, a regular and routine viewer of the news, public affairs and other non-entertainment programming carried by the CBS television network; and

That I personallly viewed the series entitled the *Defense of the United States* as originally presented on June 14, 15, 16, 17 and 18, 1981, and again when it was re-run on August 3, 4, 5, 6 and 7, 1981; and

That the attached Complaint against CBS for violation of the fairness doctrine in presentation of that program was prepared under my direction, that I am personally familiar with its contents; and

That the presentations and statements of facts contained therein are true and correct to the best of my own personal knowlege and belief.

/s/ John M. Fisher
John M. Fisher

Subscribed and sworn to before me this 13th of May, 1982.

/s/ Jean T. Baker
Notary Public

My commission expires: Feb. 18, 1985

CERTIFICATE OF SERVICE

APPENDIX F

CONSTITUTIONAL AND STATUTORY TEXTS

First Amendment to the Constitution of the United States of America:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW ACT, 80 STAT. 393, 5 U.S.C. SECTION 706

§706. Scope of review.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

> (1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due accounts shall be taken of the rule of prejudicial error.

COMMUNICATIONS ACT OF 1934, 48 STAT. 1088, AS AMENDED, 47 U.S.C. SECTION 315(a)

Sec. 315.

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided,* That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentariers, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Office - Supreme Court, U.S.
FILED
DEC [illegible] 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-556

In the Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN SECURITY COUNCIL, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

JACK D. SMITH
General Counsel
Federal Communications Commission
Washington, D.C. 20554

QUESTION PRESENTED

Whether the Federal Communications Commission abused its discretion in concluding that petitioner's complaint against CBS, Inc. failed to make a prima facie showing of a fairness doctrine violation because the complaint did not demonstrate that CBS had failed to provide a reasonable opportunity for contrasting viewpoints on the issue of national defense.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 2

Argument 4

Conclusion 6

TABLE OF AUTHORITIES

Cases:

American Security Council Education Foundation v. *FCC*, 607 F.2d 438, cert. denied, 444 U.S. 1013 4

Democratic National Committee v. *FCC*, 717 F.2d 1471 4

Fairness Doctrine Primer, 40 F.C.C. 598 4

Fairness Report, 48 FCC 2d 1, reconsideration denied, 58 F.C.C. 2d 691, aff'd *sub nom. National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d 1095, cert. denied, 436 U.S. 926 ..... 4, 5

Kennedy for President Committee v. *FCC*, 636 F.2d 432 4

National Organization for Women v. *FCC*, 555 F.2d 1002 5

Red Lion Broadcasting Co. v. *FCC*, 395 U.S. 367 5

Yellow Freight System, Inc. v. *FCC*, 656 F.2d 600 5

Page

Miscellaneous:

Notice of Inquiry in Docket 84-282, 49 Fed. Reg. 20317 (1984) 2

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-556

AMERICAN SECURITY COUNCIL, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. 5a-6a) is reported at 733 F.2d 966 (Table). The decision of the Federal Communications Commission denying petitioner's fairness doctrine complaint against CBS, Inc. (Pet. App. 7a-25a) is reported at 94 F.C.C. 2d 521.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 1984. A petition for rehearing was denied on June 15, 1984 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed, after an extension of time, on October 5, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2350(a).

STATEMENT

For five consecutive nights in June 1981, the CBS Television Network (CBS) televised a five-part series in prime time entitled *The Defense of the United States*.[1] Petitioner thereafter requested CBS to broadcast programming to provide more "pro-defense" points of view and to correct alleged factual errors in the series (Pet. App. 76a). CBS denied the request because, in its judgment, the series "included a variety of viewpoints regarding national defense issues" and "the broadcast was fair and accurate" (Pet. App. 77a).

Petitioner then filed a fairness doctrine[2] complaint with the Federal Communications Commission in which it alleged, inter alia, that because CBS had offered its five-part series "as a *definitive* study" of the country's national defense, the series, in itself, should have had a balance among contrasting viewpoints on the issue whether the nation needs less or more national defense, without regard to CBS's overall programming on this issue (Pet. App. 42a, 58a-59a (emphasis in original)).[3] Petitioner sought an FCC

---

[1]The series was rebroadcast during non-prime time hours in August 1981.

[2]The fairness doctrine requires that each broadcaster: (1) devote a reasonable percentage of its broadcast time to coverage of controversial issues of public importance and (2) provide a reasonable opportunity for the presentation of conflicting views on such issues during its overall programming. This case was decided on the basis of a broadcaster's fairness obligations at the time of the broadcasts that gave rise to petitioner's complaint. On May 14, 1984, the Commission issued a notice of inquiry looking toward a general reassessment of the fairness doctrine. See Notice of Inquiry in Docket 84-282, 49 Fed. Reg. 20317. The proceeding has not yet been completed.

[3]In a footnote in its complaint, petitioner added that it "is aware of no such 'other programming' that could be offered by CBS to 'balance' " the viewpoint that petitioner said was broadcast in the series, namely, that the nation is spending too much for national defense (Pet. App. 42a n.7).

order compelling CBS "to provide at least two hours of prime time programming" in which the "factual errors" in the five-part series would be corrected and the opposing viewpoint that the United States needs to spend more for national defense would be broadcast (Pet. App. 64a).

The Commission's Broadcast Bureau (Pet. App. 18a-25a) and later the Commission (Pet. App. 7a-17a) denied the complaint because, inter alia, petitioner did not show that CBS failed to provide a "reasonable opportunity" for the presentation of the viewpoint favoring more spending for defense (Pet. App. 10a). Although it reiterated that the fairness doctrine requires only that contrasting viewpoints be broadcast in the licensee's overall programming, the Commission pointed out that the viewpoint that petitioner wanted CBS to broadcast had been presented during the series.[4] With regard to CBS' overall programming, the Commission understood petitioner's contention to be that "whatever programming CBS has presented on the 'more defense spending' side of the issue [is] insufficient for purposes of a balanced presentation" (Pet. App. 15a; see also Pet. App. 42a n.7). The Commission held that this did not satisfy the complainant's burden under the fairness doctrine to offer "detailed and specific evidence" of an "imbalance in the licensee's overall programming" (Pet. App. 15a (citations omitted)). In light of petitioner's failure to establish a prima facie case of a fairness doctrine violation, the Commission found that no inquiry of CBS was warranted and upheld the Bureau's denial of the complaint (Pet. App. 16a n.5, 17a).

---

[4]Specifically, transcripts of the series, which were included as an exhibit to petitioner's complaint (see Pet. App. 135a), revealed statements of the Secretary of Defense, the Chairman of the Senate Armed Services Committee, and a Navy Admiral in favor of increased defense spending, as well as a report by a CBS News correspondent who advocated more spending for military training, salaries for skilled personnel, and weapons parts (Pet. App. 23a n.4).

The court of appeals affirmed without opinion (Pet. App. 5a-6a).

ARGUMENT

In holding that petitioner's complaint did not set forth a prima facie fairness doctrine claim, the Federal Communications Commission applied well-established general fairness doctrine principles. Petitioner contests the application of those principles to the facts of this case. But the application of these principles to the particular facts of this case was unanimously approved by the Commission and the court of appeals and clearly does not warrant this court review.

The Commission outlined the elements of the fairness doctrine in the *Fairness Report*, 48 F.C.C. 2d 1 (1974), reconsideration denied, 58 F.C.C. 2d 691 (1976), aff'd in relevant part *sub nom. National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d 1095 (D.C. Cir. 1977), cert. denied, 436 U.S. 926 (1978). In particular, before the Commission will require a broadcaster to defend its programming judgments, a complaint must set out a prima facie case of a violation, including:

> (1) the particular station involved; (2) the particular issue of a controversial nature discussed over the air; (3) the date and time when the program was carried; (4) *the basis for the claim that the station has presented only one side of the question*; and (5) whether the station had afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints.

48 F.C.C. 2d at 19, quoting *Fairness Doctrine Primer*, 40 F.C.C. 598, 600 (1964) (emphasis added). These criteria have been consistently approved by the courts.[5]

---

[5]See, *e.g.*, *American Security Council Education Foundation* v. *FCC*, 607 F.2d 438, 446 (D.C. Cir. 1979) (en banc), cert. denied, 444 U.S. 1013 (1980); *Kennedy for President Committee* v. *FCC*, 636 F.2d 432, 453 (D.C. Cir. 1980); *Democratic National Committee* v. *FCC*, 717 F.2d 1471, 1475 (D.C. Cir. 1983).

In this case, an examination of the transcripts of *The Defense of the United States* revealed, and petitioner has never disputed, that the viewpoint favoring more spending for national defense was broadcast at various times during the program series. See page 3 & note 4, *supra*. Petitioner thus could not allege that CBS failed to broadcast any programming in which the viewpoint favoring more spending for national defense was presented. Rather, petitioner appeared to argue that, "whatever programming CBS had presented on the 'more defense spending' side of the issue [is] insufficient for purposes of a balanced presentation" (Pet. App. 15a). However, the Commission concluded that this claim lacked specific factual support and thus was insufficient to demonstrate an "imbalance in the licensee's overall programming" (Pet. App. 14a-16a).[6] The court of appeals found no reason to disturb this conclusion. Its judgment with respect to this issue, which is little more than a pleading issue, does not warrant further review.

---

[6]Petitioner suggests (Pet. 12-13) that "the fairness doctrine • • • [provides a remedy] [f]or broadcasts that are biased, slanted, or grossly misleading • • •." However, the fairness doctrine was not designed to correct alleged instances of news distortion and falsification by broadcasters. The doctrine simply requires that broadcasters afford coverage to controversial public issues and that they provide a reasonable opportunity for the presentation of contrasting viewpoints on those issues. See generally *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 377-378 (1969). The Commission has a separate policy of investigating charges of news distortion where the allegations are properly supported by "substantial extrinsic evidence or documents that on their face reflect deliberate distortion." *Fairness Report*, 48 F.C.C. 2d at 21 (citation mitted). See *Yellow Freight System, Inc.* v. *FCC*, 656 F.2d 600 (10th Cir. 1981); *National Organization for Women* v. *FCC*, 555 F.2d 1002, 1010 (D.C. Cir. 1977). Petitioner does not challenge this standard or claim that it met the extrinsic evidence test. To the contrary, petitioner specifically disclaimed any allegation that "CBS set out to consciously slant this program [series]" (Pet. App. 61a; see also Pet. App. 59a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

JACK D. SMITH
General Counsel
Federal Communications Commission

DECEMBER 1984

DOJ-1984-12